TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 54.

JOHN MILNER, J'R, APPELLANT,

vs.

WILLIAM M. MEEK, ASSIGNEE IN BANKRUPTCY OF ABRAHAM A. MOORE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED MARCH 2, 1875.

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1 At a stated term of the circuit court of the United States, within and for the sixth judicial circuit and southern district of Ohio, begun and held at the court-house in the city of Cincinnati on the first Tuesday of October, being the sixth day of that month, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America the ninety-ninth, (present, the honorable H. H. Emmons, circuit judge,) among the proceedings had were the following, to wit:

JOHN MILNER, JR., THOMAS H. LONG, AND Cyrus M. Walker, *ads.*	No. 1976. In chancery.
2 WILLIAM M. MEEK, ASSIGNEE OF ABRAM A. Moore, a bankrupt.	

Be it remembered that heretofore, to wit, on the sixth day of November, in the year of our Lord one thousand eight hundred and seventy-four, came the said appellants, by their solicitors, and filed in the clerk's office of the court aforesaid a certain transcript of the record and proceedings of the district court of the United States for the southern district of Ohio in said cause, clothed in the words and figures following, to wit:

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, bankrupt.	In bankruptcy.

To the honorable P. B. Swing, judge of the district court for the southern district of Ohio.

W'm M. Meek, assignee of the estate of Abram A. Moore, a bankrupt, respectfully represents that the said Abram A. Moore was declared a bankrupt on the 23rd day of November, A. D. 1872; that
3 on the 23rd day of December, A. D. 1872, your petitioner, W'm M. Meek, was appointed assignee of the estate of said Abram A. Moore, bankrupt, and on the 26th day of the same month, to wit, December 26th, 1872, accepted said appointment and gave bond to the acceptance of the register for the 6th district, Hon. James H. Thompson, which said bond was approved on the 1st day of January, A. D. 1873. Your petitioner further represents that the assets of said estate consist of the following-described real estate, situate as follows, to wit:

FIRST TRACT.—Situate in the county of Clinton and State of Ohio, being part of William Moore's survey No. 2970, and bounded as follows: Beginning at a stone where a hickory bears south 12° east $13\frac{1}{2}$ links, the black oak *gone* south corner to Hugh Evans, and in a county road; thence along said road with Evans' line N. 43° E. $79\frac{92}{100}$ poles to a stone; thence S. 44° 10′ E. $211\frac{9}{10}$ poles to a stake in the northwest line of Bernard's survey No. 707, $7\frac{3}{4}$ poles southwest of the north corner of said survey; thence with said line S. $44\frac{1}{4}$° W. $79\frac{92}{100}$ poles to a
4 stone, where an ash bears N. 21′ W. 6 links, and an ash bears S. 52° E. 18 links, south corner of the original survey; thence N. 44° 10′ W. 210 poles to the beginning, containing one hundred and five and three-eighths ($105\frac{3}{8}$) acres, more or less, excepting and reserving a lot containing about one (1) acre at the south corner of the tract, which said lot was heretofore deeded to George Burnes.

SECOND TRACT.—Situate in the county of Clinton and State of Ohio and bounded and described as follows, to wit: On the waters of Lee's Creek, being a part of Moore's survey No. 707, and on the north side of the county road leading from Wilmington to New Lexington; thence with the line of said road N. 85° W. 9¼ poles to a stone in the patent-line of the original survey No. 2970; thence with said line N. 45° W. $11\frac{15}{100}$ poles to two hickories and sugar-trees in the said line; thence S. 83° E. 23½ poles to a stone in the patent-line of said Bernard's survey No. 707; thence with the same S. 44° W. 8½ poles to the beginning, containing one acre of land, be the same more or less.

5 THIRD TRACT.—Situate in the county of Clinton and State of Ohio, and in W'm Moore's survey, No. 2970, and bounded and described as follows: Beginning at a stake in Mrs. Henry's line, east corner, to said Abram A. Moore's 105 acre tract of land; thence with the line of said tract N. 44° W. 212½ poles, to the north corner of said tract, in the centre of the New Vienna and Centreville road, and in the line of R. P. Finley's land; thence with said road and line N. 43° E. $37\frac{1}{100}$ poles to a stake, corner to a 76½ acre tract, deeded by W'm Moore and Susannah, his wife, to Thomas C. Moore, where a stone, another corner to said tract, and corner to said R. P. Finley's tract, bears N. 43° E. 25¼ links; thence with the line of said Thomas C. Moore's tract S. 44° E. 214½ poles to a stake, corner to a 76¼ acre tract, deeded by said W'm Moore and Susannah, his wife, to Margery A. Moore, where a maple 12 inches in diameter bears S. 44¾° W. 39 links; thence with the line of said tract S. 44¾° W. $37\frac{2}{100}$ poles to the beginning, containing forty-nine acres and two roods (49 A. 2 R.) of land, more or less.

6 FOURTH TRACT.—Situate in the county of Clinton and State of Ohio, and lying on the waters of Lee's Creek, bounded and described as follows: Beginning at a stone in the middle of the road leading from Wilmington to New Lexington; thence with said road S. 85° E. $76\frac{1}{100}$ poles, to a stone in the N. E. line of the original survey; thence with Moore's survey N. 42° 30′ W. $54\frac{5}{100}$ poles, to a stone or stake in the line of said survey; thence S. 45° $52\frac{2}{100}$ poles, to the beginning, containing eight and three quarters (8¾) acres of land, be the same more or less, being part of survey No. 994, in the name of Benjamin Temple.

FIFTH TRACT.—Situate in the county of Clinton and State of Ohio, on the waters of Lee's Creek, being a part of Benjamin Temple survey, No. 994, and bounded and described as follows: Beginning at a box-elder and ash in the northwest line of Temple's survey, north corner of George Hoskins, senr., land; thence S. 45° W. $84\frac{25}{100}$ poles, to a stake in the centre of the road; thence N. 45° E. $118\frac{50}{100}$ poles, to a
7 stone, corner of W'm Hoskins' land; thence S. 45° E. 84½ poles to the beginning, containing sixty-two acres three roods and twenty-two perches, (62 A. 3 R. 22 P.) more or less.

SIXTH TRACT.—Situate in the county of Clinton and State of Ohio, being a part of Benjamin Temple's survey, No. 994, on the waters of Lee's Creek, and bounded and described as follows: Beginning at a stone in the centre of the Wilmington road, at the corner of J. N. Henry's land; thence with said road S. 67° E. $45\frac{75}{100}$ rods to a stone in the centre of said road, corner to John Powell's land; thence with said road S. 71° E. $20\frac{40}{100}$ rods to a stone, corner of A. Moore's land; thence with his line N. 47° E. 49 rods to another corner of A. Moore's land; thence with his line S. 46° W. 76 rods to the place of beginning, containing twenty-three

acres three roods and fifteen perches of land, be the same more or less.

SEVENTH TRACT.—Situate in the county of Clinton and State of Ohio, on the waters of Lee's Creek, and bounded and described as follows:

8 Beginning at a stone in the Wilmington road, corner of A. Moore's land; thence with his line S. 46° W. $82\frac{55}{100}$ rods to a stone in the line of John Hoskins' land; thence with his line S. 43° E. 41½ rods to a *to a* stake or stone in the line of John Powell's land; thence with his line N. 47 E. $101\frac{50}{100}$ rods to a stake or stone in the Wilmington road; thence with said road N. 67° W. $45\frac{75}{100}$ rods to the beginning, containing twenty-four acres and two and one-half perches, (24 A. 2½ P.,) more or less.

EIGHT TRACT.—Situate in the county of Dent and State of Missouri, and is bounded and described as follows, viz: The northeast quarter (¼) and the east half (½) of the northwest quarter (¼) of section number twenty-six (26) in township number thirty-two (32) north, of range number four (4) west, containing, in all, two hundred and forty acres of land, more or less.

9th. And that said Abram A. Moore, bankrupt aforesaid, is the owner of the following right, to wit: The exclusive right to sell

9 within the county of Clinton, State of Ohio, only, a certain patent or improvement in churns, which said right is evidenced by a conveyance or patentee's deed from one John Moyers, patentee of patent to the said Abram A. Moore, bearing date June 5th, A. D. 1870.

And it is further respectfully represented that, upon said first, (1,) second, (2,) third, (3,) fourth, (4,) fifth, (5,) sixth, (6,) and seventh (7) tracts of land, as described in this petition, the following liens are claimed to exist, viz:

First. For the taxes thereon for the years eighteen hundred and seventy-one (1871) and eighteen hundred and seventy-two, (1872.)

Second. That on the 19th day of January, A. D. 1870, in the case of C. M. Walker vs. Abram A. Moore, an order of attachment was issued out of the court of common pleas of Clinton County, Ohio, and levied upon the entire real and personal estate of the said Abram A. Moore; and afterwards, to wit, at the term, A. D. 1872, of said court, judgement

10 was rendered against the said Abram A. Moore and in favor of the said C. M. Walker for the sum of $, and costs of suit, taxed at $, and which said judgement is claimed to be a prior and subsisting lien upon the whole of said real estate. That on the 13th day of July, 1870, said Abram A. Moore and wife executed to one H. A. Shepherd a mortgage on tracts numbers one, (1,) three, (3,) four, (4,) and five, (5,) herein described, to secure the payment of a note for three thousand dollars, ($3,000.00,) of the same date, with interest at eight per cent per annum; said note payable July 13th, 1871; and which said claim, with the interest, being unpaid and unsatisfied from July 13th, 1871, is a lien upon said tracts one, (1,) three, (3,) four, (4,) and five, (5,) as aforesaid.

That one T. H. Long commenced a suit against the said Abram A. Moore on the second (2) day of January, 1871, and issued out of the court of common pleas of said Clinton County, Ohio, an attachment against the said Abram A. Moore, and caused the same to be levied upon the property of the said Abram A. Moore, real and personal.

11 That at the November term, A. D. 1872, of said court said T. H. Long recovered a judgement against the said Abram A. Moore for the sum of $, and costs of suit, taxed at $, and which is claimed to be a lien upon the whole of said real estate by virtue of said attachment.

That on the 19th day of January, 1872, said Abram A. Moore and wife executed a mortgage to one John Milner, j'r, and which was recorded on the 22nd day of January, 1872, on the entire real estate of said Abram A. Moore, situate in the said county of Clinton, State of Ohio, to secure the payment of a note executed by the said Abram A. Moore to the said John Millner, j'r, for the sum of eight thousand two hundred and ninety-five and $\frac{79}{100}$ dollars, ($8,295.79,) and two promissory notes, upon which said John Millner, j'r, is security for the said Abram A. Moore as in said mortgage set forth, and which is claimed to be a valid and subsisting lien upon the whole of said real estate as described, tracts one (1) to seven, (7,) inclusive.

That one Silas Routh recovered a judgement against said Abram
12 A. Moore, on the docket of one C. C. Bowers, a justice of the peace for the said Clinton County, Ohio, on the 16th day of January, 1872, for the sum of $276.32 and costs. That on the 23rd day of March, 1872, a transcript of said judgement was filed in the court of common pleas of said county of Clinton, Ohio, and execution issued and levied upon said tract number three, (3,) as described in this petition, containing forty-nine and one-half (49½) acres, and is, by virtue of said levy, claimed to be a lien upon said tract of land number three, (3.)

That on the 1st day of April, 1872, to wit, at the term of the year 1872 aforesaid of the court of common pleas of Clinton County, Ohio, one Samuel J. Moore recovered two several judgements against the said Abram A. Moore, one for $466.69 and one for $516.30, with costs of suit, taxed at $; and also on the 13th day of June, 1872, at the term of said court in the year aforesaid, recovered a judgement against the said Abram A. Moore for the sum of $1,378.10 and costs of suit, taxed at $, and all of which said judgements are claimed to be a lien upon the entire real estate of said Abram A. Moore,
13 situate in said county of Clinton, Ohio.

That one William W. Moore, j'r, on the 10th day of June, A. D. 1872, to wit, at the term in the year aforesaid of said court, recovered two (2) several judgements against the said Abram A. Moore, one for the sum of $138.65, and costs of suit, taxed at $, and one for $745.94, and costs of suit, taxed at $, and which said judgements are claimed to be valid and subsisting lien upon the said real estate in this petition described as situate in county of Clinton, Ohio, aforesaid.

That one William Moore, s'r, claims that, by virtue of a written agreement made and signed on the 4th day of April, 1861, by and between himself and the said Abram A. Moore, whereby the said Abram A. Moore bound himself to maintain the said William Moore, s'r, one-half the time during his natural life, the consideration being the conveyance by the said William Moore, s'r, to the said Abram A. Moore said tract of forty-nine and one-half (49½) acres, being number three (3) as described in this petition. And the said William Moore, s'r, claims a lien upon said tract number three (3) of 49½ acres by virtue of said agree-
14 ment and conveyance, estimating the value thereof at $500.00.

That a judgement was obtained by Thomas C. Moore against the said Abram A. Moore in the court of common pleas for said Clinton County, Ohio, for the sum of $3,877, and costs, taxed at $, on the 29th day of November, 1872, and after the said Abram A. Moore was declared a bankrupt.

That one James Patton also obtained a judgement against said Abram A. Moore in said Clinton County common pleas court, on the 27th day of November, at the November term of said court, 1872, for the sum of

$435.00, and costs of suit, taxed at $, which was also after said Abram A. Moore was declared a bankrupt.

And your petitioner further represents that the judgements of C. M. Walker, and also that of T. H. Long, were severally obtained after said Abram A. Moore was adjudged a bankrupt.

Also that the following general creditors have proved claims against the said Abram A. Moore for the following sums, to wit: Joseph Cohn, $85.32; J. N. Henry, $151.91; Isaac Smith, $12.39; Alexander Smith, $70.80; J. W. Bell, $5.90; Singer Manufactoring Company, $85.00; Samuel
15 Hixon, 4.48; W'm Moore, s'r, $863.28; J. C. Santee, $9.00; Glascock & Bro., $7.50; D. C. Amberg, $27.57; J. H. McMillan, $20.00; W. P. Miller, $19.17; P. A. Arthur, $3.70; Patrick Collins, $115.94; A. S. Amberg, $75.87; Abram Conard, $140.00; and A. S. Beard, $24.98.

Your petitioner therefore prays that C. M. Walker, H. A. Shepherd, T. H. Long, John Milner, j'r, J. Silas Routh, Samuel J. Moore, W'm W. Moore, j'r, W'm Moore, s'r, Thomas C. Moore, James Patton, Joseph Cohn, J. N. Henry, Isaac Smith, Alexander Smith, Singer Machine Co., Samuel Hixon, J. C. Santee, Glascock & Bro., D. C. Amberg, J. N. McMillen, W. P. Miller, P. A. Arthur, Patrick Collins, A. S. Amberg, Abram Conard, and A. B. Beard may be made defendants hereto, and the said defendants may be called upon to answer, and that your honor will order proper steps to be taken for the adjustment of the liens, and that your petitioner may be ordered to sell real estate upon such terms as, in the judgement of your honor, seem best for all creditors, and such other relief as may be proper.

Dated March 10th, 1873.

W'M M. MEEK,
Assignee.

16 And thereupon there was issued out of the clerk's office of the court aforesaid our certain writ of subpœna ad respondendum to the said defendants, clothed in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

The President of the United States of America to the marshal of the southern district of Ohio, greeting:

You are hereby commanded to summon C. M. Walker, H. A. Shepherd, T. H. Long, John Milner, j'r, Silas Routh, Samuel J. Moore, William W. Moore, j'r, William Moore, s'r, Thomas C. Moore, James Patton, Joseph Cohn, J. N. Henry, Isaac Smith, Alexander Smith, Singer Machine Company, Samuel Hixon, J. C. Santee, Glascock & Brother, D. C. Amberg, J. H. McMillen, W. P. Miller, P. A. Arthur, Patrick Collins, A. S. Amberg, Abram Conard, and A. B. Beard, citizens of and residents in the State of Ohio, if they be found in your district, to be and appear in the district court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in April next, to answer a certain bill in chancery filed and exhibited in said court against them by William M. Meek, assignee of Abram A. Moore,
17 a bankrupt citizen of and resident in the State of Ohio. Hereof you are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the honorable Philip B. Swing, judge of said district court,

and the seal thereof, at Cincinnati, this 14th day of March, A. D. 1873, and in the 97th year of the Independence of the United States of America.

[SEAL.] Attest: THOMAS AMBROSE, *Clerk.*

Upon which said subpœna was the following endorsement, to wit:

Security for costs.

I. P. Strauss acknowledges himself security for all costs for which complainant may become liable in this case.

And afterwards, to wit, on the 29th day of March, A. D. 1873, came the said marshal, to whom the said writ was in form aforesaid directed, and returned the same into the clerk's office of the court aforesaid with his proceedings endorsed thereon in the words and figures following, to wit:

Marshal's return.

I received this writ at Cin'ti at 5.30 p. m. March 14th, 1873, and served true copy, as follows: Personally on C. M. Walker, J. H. McMillen, and A. H. Klinger, agent of Singer Sewing-Machine Company,
18 March 19th, 1873; personally, A. S. Amberg, J. C. Santee, Silas Routh, J. N. Henry, Isaac Smith, P. A. Arthur, A. B. Beard, William P. Miller, Patrick Collins, Samuel Hixson, Abram Conard, William Moore, s'r, William W. Moore, j'r, Jos. Cohn, and John Milner; and served a true copy at the us'al place of residence of D. C. Amberg, Alex. Smith, Samuel J. Moore, and T. H. Long, March 25th, 1873; and served true copy personally on James Patton, Glascock & Brother; and served H. A. Shepherd by leaving a true copy at his usual place of business; and Tho's C. Moore not found, but served a true copy on Doan & White, attorneys for said Tho's C. Moore.

March 26th, 1873.

W. R. THRALL,
U. S. Marshall,
By J. G. OUTCALT,
Dep'ty.

And afterwards, to wit, on the 8th day of April, in the year aforesaid, an entry was made upon the journal of said court in the words and figures following, to wit:

Order of reference.

W'M M. MEEK, ASSIGNEE OF ABRAM A. MOORE, bankrupt, *cs.* C. M. WALKER AND OTHER CREDITORS OF SAID bankrupt.	Entry.

19 The court having carefully examined the petition filed in this case and the prayer thereof, does order that the same be referred to James H. Thompson, register in bankruptcy for the sixth district of the southern district of Ohio, with instructions that he shall give due notice by publication for three weeks in the following weekly papers, published and in general circulation in said sixth district, namely, "Hillsborough Gazette" and in the "Clinton County Republican," to all the

creditors of said bankrupt to file their answers and defences, together with all the proofs, before said register on or before the 15th day of July, A. D. 1873.

And that said register shall give like notice to all creditors aforesaid that on the 5th day of August, A. D 1873, he will hold a court of bankruptcy in the court-house in Hillsborough, Ohio, and will then and there proceed to hear the testimony adduced by the parties, and arguments of counsel, and to determine the priority of liens among the creditors of said bankrupt. And he shall make a full report to this court of all his findings, together with the evidence produced by the parties on
20 said hearing, and of all other such matters as may transpire in the premises as may seem to him proper for the investigation of this court.

And afterwards, to wit, on the twenty-first day of April, in the year aforesaid, came the said C. M. Walker, one of the defendants, by his solicitors, and filed in the clerk's office of the court aforesaid his certain answer to the bill of complaint herein, clothed in the words and figures following, to wit:

Answer of C. M. Walker.

In the district court of the U. S. in and for the southern district of Ohio.

WM M. MEEK, ASSIGNEE OF ABRAM A. MOORE in bankruptcy,
vs.
CYRUS M. WALKER ET AL.

The several answer of Cyrus M. Walker, one of the defendants, to the bill of complaint of complainant.

This defendant, now and at all times saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be taken to the many errors, uncertainties, and imperfections
21 in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, saith.

That on the 20th day of December, 1870, he commenced an action in the court of common pleas in and for the county of Clinton and State of Ohio, against Abram A. Moore, for whom complainant is now assignee in bankruptcy, to recover damages from the said Moore for failing, neglecting, and refusing to accept and pay for five hundred head of hogs, as the said Abram A. Moore had bound himself to do by his contract with this defendant, dated and entered into between them on the 28th day of June, A. D. 1870; that on the same day, the said 20th day of December, A. D. 1870, he caused an order of attachment to be issued in said action, which said order of attachment was, on the 21st day of December, A. D. 1870, at 12.30 o'clock p. m. of said day, duly levied by the sheriff of said Clinton County, Ohio, on the premises in the bill described as the lands and tenements of the said Abram A. Moore, and
22 also on certain personal property of the said Abram A. Moore; that afterwards, to wit, on the 31st day of December, A. D. 1872, at the term of said court of commom pleas of Clinton County, Ohio, which commenced on November 25th, A. D. 1872, this defendant, by the consideration of the said court, recovered a judgement in said action

against the said Abram A. Moore for the sum of $4,189 $\frac{19}{100}$, and costs, taxed to $171.08, a transcript of the record of which said action, order of attachment, and judgement is hereto attached, marked "Ex. A," and prayer, to be read as a part this answer. This defendant, therefore, asks that he be decreed to receive from the proceeds of any sale to be made herein the said sum of $4,189 $\frac{19}{100}$, the amount of his said judgement, with interest thereon from the 31st day of December, A. D. 1872, and that the same be held a lien upon the premises described in the bill of complaint as of and from the 21st day of December, A. D. 1870.

CYRUS M. WALKER,
By SLOANE & TELFAIR,
His Solicitors.

UNITED STATES OF AMERICA,
State of Ohio, Clinton County, ss:

23 I, Cyrus M. Walker, being duly affirmed, depose and say that all the several matters and things which are set forth in the foregoing answer as from the information of others I believe to be true, and that all the several after matters and things therein set forth are true in substance and in fact.

CYRUS M. WALKER.

Affirmed to and subscribed before me and in my presence this 10th day of April, A. D. 1873.

[SEAL.] DAVID T. WHITE,
Notary Public.

Afterwards, to wit, on the 7th day of April, A. D. 1874, the complainant, William M. Meek, assignee, &c., by E. M. De Bruin and H. [illegible] Meek, his solicitors, filed in the clerk's office of the court aforesaid his reply to the separate answer of C. M. Walker in the words and
24 figures following, to wit:

Reply of W'm M. Meek to answer of C. M. Walker.

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, BANKrupt, William M. Meek, assignee in bankruptcy of the said Abram A. Moore,
vs.
C. M. WALKER, H. A. SHEPHERD, T. H. LONG, John Milner, j'r, Silas Routh, Samuel J. Moore, W'm W. Moore, j'r, William Moore, s'r, Thomas C. Moore, Joseph Cohn, J. N. Henry, Isaac Smith, Alexander Smith, J. N. Bell, Singer Manufactoring Company, Samuel Hixon, J. C. Santee, James D. Patton, Glas-
25 cock & Bro., D. C. Amberg, J. H. McMillen, W. P. Miller, P. A. Arthur, Patrick Collins, A. S. Amberg, Abram Conard, and A. B. Beard.

The reply of the said William M. Meek, assignee of Abram A. Moore, to the separate answer of C. M. Walker, filed in this case.

William M. Meek, assignee of Abram A. Moore, as to the matters,

things, and statements contained and set forth in the said answer of the said C. M. Walker, denies and states as follows:

That the affidavit upon which the attachment was issued, as referred to in the separate answer of the said C. M. Walker, and as the same appears in the transcript of the record of said case, was not sufficient in law, in this, to wit: That the said affidavit is in the alternative, and does not state what act or acts of the said Abram A. Moore, committed or done by him, entitled said Walker to his said attachment; that the return of the sheriff, as the same appears in the transcript of the
26 record of said case, does not show that the property levied upon by virtue of the attachment issued in said cause was the property of the said Abram A. Moore; that the transcript of the record attached to and made a part of the answer and reply in this case shows that the motion of said Abram A. Moore to dissolve the said attachment, made pending the suit before the State court and before judgement, for the reason that the affidavit was insufficient, and that the facts stated therein were not true, was, on the motion of the said C. M. Walker, by his attorneys, stricken from the files of the said court of common pleas of Clinton County, on the ground that said court, since the said Abram A. Moore had been adjudged a bankrupt by the district court of the United States, had no jurisdiction to dispose of the question raised by said motion to dissolve, and thereby remitted all questions as to the validity of said attachment and any lien by virtue thereof to the adjudication of this court.

And said assignee further avers and maintains that, because of the facts hereinbefore stated, the said attachment is utterly void and
27 of no effect as against him, the said assignee.

The said assignee prays that the said attachment may be adjudged and decreed to be dissolved and void and of no effect, and that the said C. M. Walker has not, by reason of the same, any lien whatever upon the said seven tracts of land in the bill in this case described, or upon either of them.

WILLIAM M. MEEK,
Assignee of Abram A. Moore, Bankrupt,
By E. M. DE BRUIN AND H. L. MEEK,
His Solicitors.

THE STATE OF OHIO,
Highland Co., ss:

William M. Meek, assignee in bankruptcy of Abram A. Moore, being duly sworn, upon his said oath says that he believes the statements of the foregoing reply to be true.

WM M. MEEK,
Assignee of Abram A. Moore in Bankruptcy.

Sworn to before me and signed in my presence by the above-named William M. Meek, assignee in bankruptcy of Abram A. Moore, this 6th day of August, A. D. 1873.

JA'S H. THOMPSON,
Register.

28 And on the twenty-first day of April, A. D. 1873, came the defendant, Thomas H. Long, by his solicitors, and filed in the clerk's office of the court aforesaid his certain answer to the bill of complaint herein, clothed in the words and figures following, to wit:

Answer of Thomas H. Long.

In the district court of the United States for the southern district of Ohio.

WM M. MEEK, ASSIGNEE IN BANKRUPTCY OF Abram A. Moore,
vs.
C. M. WALKER ET AL.

The several answer of Thomas H. Long, one of the defendants, to the bill of complaint by complainant.

This defendant, now and at all times saving to himself all and all manner of benefit or advantage of exceptions, or otherwise, that can or may be taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material or necessary for him to make answer to, answering, saith:

That on the second day of January, A. D. 1871, he commenced
29 an action in the court of common pleas in and for county of Clinton and State of Ohio, against the said Abram A. Moore, for whose complain't is now assignee in bankruptcy, to recover damages from the said Moore for failing, neglecting, and refusing to accept and pay for 175 head of hogs, as he, the said Moore, had bound himself to do by his contract with this defendant, dated May 25th, A. D. 1870.

That at the same time this defendant caused an order of attachment to be issued in said action, which said order of attachment was, on the 10th day of January, A. D. 1871, duly and legally levied by the sheriff of said county of Clinton, Ohio, on the premises in the bill described as the lands and tenements of the said Abram A. Moore, and also on certain personal property of the said Abram A. Moore. That afterwards, to wit, on the 31st day of December, A. D. 1872, at the term of said court of common pleas of Clinton County, Ohio, which commenced on November 25th, 1872, this defendant, by the consideration of said court, recorded a judgement in said action against the said Abram A.
Moore for the sum of $1,200.00, and costs, $81.45. A transcript
30 of the record of which said action, order of attachment, and judgement, duly certified, is hereto attached, marked "Ex. A," and prayed to be read as a part of this answer.

This defendant therefore asks that he be decreed to receive from the proceeds of any sale of said premises to be made herein the said sum of $1,200.00, the amount of his said judgement as aforesaid, with interest thereon from the date of its rendition, and $81.45 costs, and that the same be declared and held a lien on the premises described in the bill of complaint of complainant as of and from the 10th day of January, A. D. 1871, and that he be hence *he* dismissed with his reasonable costs.

THOMAS H. LONG.
By SLOANE & TELFAIR,
His Solicitors.

UNITED STATES OF AMERICA,
State of Ohio, Clinton County, ss:

I, Thomas H. Long, being duly sworn, depose and say that all the several matters and things which are set forth in the foregoing answer as

from the information of others I believe to be true, and that all the
31 several other matters and things therein set forth are true in substance and in fact.

(Signed) THOMAS H. LONG.

Sworn to before me and subscribed in my presence this 10th day of April, A. D. 1873.

DAVID T. WHITE.
Notary Public in & for C. Co., Ohio.

And on the said 21st day of April, A. D. 1873, the defendant, S. L. Moore, by Sloane and Telfair, his solicitors, filed in the office of the clerk's office of our said court here his answer to the petition of William M. Meek, assignee as aforesaid, in the words and figures following, to wit:

Answer of Samuel T. Moore.

In the district court of the United States for the southern district of Ohio.

WM M. MEEK, ASSIGNEE IN BANKRUPTCY OF Abram A. Moore,
vs.
CYRUS M. WALKER ET AL.

The several answer of Samuel J. Moore, one of the defendants, to the
32 *bill of complaint of complainants.*

This defendant, now and at all times saving to himself all and all manner of benefit or advantage of exceptions or otherwise that can or may be taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, saith,

That by the consideration of the court of common pleas in and for the county of Clinton and State of Ohio, at its February term, A. D. 1872, (said term commencing February 26, 1872,) in a certain action then pending in said court, wherein John Savage was plaintiff and Abram A. Moore (for whom complainant is now assignee in bankruptcy) and this defendant were defendants, and on the 1st day of April, A. D. 1872, a judgement was rendered by said court in favor of said John Savage and against the said Abram A. Moore, and this defendant as his surety, in the sum of $466.69, and costs of suit, taxed at $10.35; and that the same
33 court did on the same 1st day of April, A. D. 1872, at its said February term, render another judgement against the said Abram A. Moore, and this defendant as his surety, in a certain other action then pending in said court, wherein J. N. Henry was plaintiff, and said Abram A. Moore and this defendant were defendants, in favor of said J. N. Henry, and against said Moore, and this defendant as his surety, for the sum of $516.30, and costs of suit, $14.45, and that the same court did at its June term, A. D. 1872, said term commencing on the 17th day of June, A. D. 1872, render another judgement against this said Abram A. Moore, and this defendant as his surety, in a certain other action then pending in said court, wherein John F. Leverton was plaintiff, and the said Abram A. Moore and this defendant were defendants, in favor of the said John F. Leverton, and against the said Abram A. Moore, and

this defendant as his surety, for the sum of $1,378.11 and costs of suit, taxed to $22.99. In each and all of said judgements so rendered as aforesaid by the said court of common pleas of Clinton County, Ohio, this defendant was by the said court certified to be surety for
34 the said Abram A. Moore. That afterward this defendant was compelled to pay off and satisfy, and that he did pay off and satisfy, each and all of said judgements so rendered as aforesaid, against the said Abram A. Moore as principal, and this defendant as his surety, and all the costs of said suits: that at the time he so paid off and satisfied the said several judgements as aforesaid, the said judgements were liens on the real estate of said Abram A. Moore, described in the bill of complaint of complainant as and from the first day of each of said terms of said court of common pleas, the said judgements of the said John Savage and the said J. N. Henry from the 20th day of February, A. D. 1872, and the said judgement of the said John F. Leverton from the 17th day of June, A. D. 1872, in favor of each of said plaintiffs respectively, and that by so paying off and satisfying said judgements as aforesaid this defendant became entitled under the statutes of the State of Ohio to all the rights, remedies, and liens against the said Abram A. Moore that the plaintiffs in each and all of said judgements or
35 suits were entitled to. This defendant therefore asks that the full amount of each and all of said several judgements so rendered against him, with interest from their respective dates, with costs of suit by him paid, may be decreed and ordered to be paid him in the order of priority herein stated, out of the proceeds of any sale herein made of the premises in the bill described, and that he be hence dismissed with his reasonable costs.

SAMUEL J. MOORE,
By SLOANE & TELFAIR, *his Solicitors.*

UNITED STATES OF AMERICA,
State of Ohio, Clinton County, ss:

I, Samuel J. Moore, being sworn, depose and say that all the several matters and things set forth in the foregoing answer are true in substance and in fact.

SAMUEL J. MOORE.

Sworn to and subscribed before me and in my presence this 7th day of April, A. D. 1873.

[SEAL.] DAVID T. WHITE,
Notary Public for C. Co., O.

36 And afterwards, to wit, on the seventh day of April, A. D. 1874, came the said John Milner, j'r, by his solicitors, and filed in the clerk's office of the court aforesaid his certain answer and cross-petition herein, clothed in the words and figures following, to wit:

Answer and cross-petition of John Milner, j'r.

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, BANKRUPT. } In bankruptcy,

Answer and cross-petition of John Milner, j'r.

The said John Milner, j'r, denies the statement in the petition that the attachment of C. M. Walker was on the 19th day of January, A. D.

1871, or at any other time, levied upon the real estate of said Abram A. Moore, in Clinton County, Ohio.

Defendant avers that the said A. A. Moore had not the legal title, and did not own at the time of the pretended levy of such attachment any of the lands mentioned in said petition from 1 to 7 inclusive.

37 Defendant denies that the judgement mentioned in said petition of said C. M. Walker is a prior and subsisting lien whatever upon the lands mentioned in said petition, or upon any real estate of said bankrupt.

The said John Milner, j'r, denies the statement in said petition mentioned, that the attachment of T. H. Long was levied upon the real property of A. A. Moore at any time.

Defendant avers that at the time said attachment was sued out, and at the time a pretended levy was made thereon, the said A. A. Moore had not the legal title to, and was not the owner of, any of said lands in said petition mentioned from 1 to 7 inclusive.

Defendant denies that said T. H. Long, by virtue of his said judgement, has any lien upon the lands mentioned in said petition, either by his judgement or by said attachment.

The defendant says he holds the note of said A. A. Moore for eight thousand two hundred and ninety-five dollars and eighty-nine cents, dated January 19th, 1872, payable on or before December 25th,

38 1872, with six per cent. interest from date, secured by mortgage on tracts of land numbered 1 to 7 inclusive in said petition, which note is still unpaid.

Defendant was also surety for A. A. Moore to one Joseph C. Worthington (besides the above amount) in a note due January 1st, 1871, which was secured in said mortgage by a description of the debt, and said mortgage was also given to indemnify said surety. Said defendant has paid said debt, viz. $155.00, March 20th, 1872, and 1,383.93, May 19th, 1873, which sums are yet due and unpaid to defendant.

Defendant was, and is, also surety for said A. A. Moore to John B. Moore upon a note for $270.00, dated about September 7th, 1871, bearing eight per cent. interest from date, which is also mentioned in said mortgage, and the same was also given to indemnify said defendant.

Defendant's said mortgage was filed January 22nd, 1872, and is of record, Clinton County records, in Book M, pages 97, 98, 99, 100.

Defendant avers that the mortgage above recited, so far as the

39 first note above set forth is concerned, was for the purchase-money of said land, and is yet the unpaid purchase-money. The said defendant was the bona-fide purchaser of said land in said petition mentioned for a valuable consideration, and for all the said land was worth, and defendant avers that he, being the owner in fee of said premises, sold the same to the said A. A. Moore at the date of said mortgage, and made him a deed therefor, and took from him the said mortgage and the said first above-named note to secure said purchase-money.

Defendant avers that he has a vendor's lien for the said first note and interest, which said mortgage was taken to secure, and that he has a further lien to indemnify him for the notes upon which he is surety, and he avers that when the said attachments of the said Walker and Long were levied (if levied) the said lands, from one to seven inclusive, were owner in fee-simple by him, said John Milner, j'r, and not then transferred to said A. A. Moore, nor had the said A. A. Moore any interest therein, and in fact no lands of said A. A. Moore were then sub-

40 ject to the said attachments or to any lien by virtue of the same.

The said defendant claims precedence, by virtue of the premi-

ses, of all other pretended liens, and priority of payment out of the proceeds of the sale of said lands excepting the taxes and the lien of said Henry A. Shepherd.

JOHN MILNER, J'R.

STATE OF OHIO,
Highland Co., ss :

John Milner, j'r, being duly sworn, deposeth and saith that the above answer and the allegations therein contained are true, as he verily believes.

JOHN MILNER, J'R.

Sworn to and subscribed before me this 14th July, A. D. 1873.
JAMES H. THOMPSON,
Register.

41 And afterwards, but on the day and year last aforesaid, came the said complainant, by his solicitors, and filed in the clerk's office of the court aforesaid his certain reply to the answer and cross-petition of the said John Milner, j'r, herein, clothed in the words and figures following, to wit:

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, BANKrupt, William M. Meek, assignee of the said Abram A. Moore,
vs.
C. M. WALKER, H. A. SHEPHERD, T. H. LONG, John Milner, j'r, Silas Routh, Samuel J. Moore, William W. Moore, j'r, William Moore, s'r, Thomas C. Moore, Joseph Cohn, J. N.
42 Henry, Isaac Smith, Alexander Smith, J. W. Bell, Singer Manufacturing Company, Samuel Hixon, J. C. Santee, Glascock & Bro., D. C. Amberg, J. H. McMillen, W. P. Miller, P. A. Arthur, Patrick Collins, A. S. Amberg, Abram Conard, A. B. Beard, and J. D. Patton.

Reply of W'm M. Meek, assignee, to answer and cross-petition of John Milner, j'r.

The reply of the said William M. Meek, assignee of Abram A. Moore, to the separate answer and cross-petition of John Milner, j'r, filed in this cause.

William M. Meek, assignee of Abram A. Moore, as to the matters, things, and statements contained and set forth in the said answer of the said John Milner, j'r, denies, and states as follows:

43 Prior to and on the 17th day of November, 1870, the said Abram A. Moore was the legal owner in fee-simple, and was in possession of the said seven tracts of land first described in the bill in this cause, and mentioned in the answer and cross-petition of the said John Milner, j'r, but on the said 17th day of November, 1870, the said Moore and wife made and delivered to the said John Milner, j'r, a

certain paper-writing of that date, in the form of a deed of general warranty, whereby the said Moore and wife pretended and professed to convey to said John Milner, j'r, in fee-simple, the said seven tracts of land. But the said deed was made and delivered by the said Abram A. Moore, with intent thereby to hinder, delay, and defraud the then creditors of him, the said Abram A. Moore, of their just and lawful debts, claims, and damages against him, the said Abram A. Moore, and to hinder and delay them, the said creditors, in the collection of the said debts, claims, and damages.

The said deed was, moreover, made upon no consideration whatever, no part of the consideration therein expressed having been ever
44 paid, nor at the time of the making of the said deed being intended to be demanded or paid.

The said Abram A. Moore at the time of making and delivery of the said deed was in failing circumstances, and was, in fact, insolvent, as he and the said Milner then well knew. And the said Milner procured the said deed to be made and delivered to him, and accepted the same with intent to defraud and to assist and enable the said Abram A. Moore to defraud the said creditors of him, the said Moore, of their just and lawful debts, claims, and damages against him, the said Moore, and to hinder and delay them, the said creditors, in the collection of their said debts, claims, and damages, he, the said Milner, then well knowing that the said Moore, in making and delivering the said deed to him, the said Milner, intended thereby to hinder, delay, and defraud as aforesaid the said creditors. Wherefore the said William M. Meek, assignee of Abram A. Moore, says and maintains that the said deed as against the then existing creditors of the said Moore was and is utterly void and of no effect, and was, as against the said creditors, wholly ineffectual to pass the title out of the said Moore.

45 And he further avers and maintains that because of the facts hereinbefore stated the said deed is utterly void and of no effect as against him, the said assignee.

The said assignee, for further reply to the statements and allegations of the said answer and cross-petition of the said Milner, denies that there is anything legally due to the said Milner upon said promissory note of $8,295.89, dated January 19th, 1872, mentioned in the said answer of the said Milner.

The said Milner procured and received the said hereinbefore-mentioned deed from the said Moore and wife as hereinbefore stated, and on the 19th and 20th days of January, 1872, had no other title, nor claim or pretense of title, to the said seven tracts of land than such as the said deed gave him or authorized him to make. On the said 19th day of January, 1872, the said Milner and wife executed to the said Abram A. Moore, for the pretended consideration of sixteen thousand dollars, a quit-claim deed, in due form of law, for the said seven tracts of land. But no
46 part of the consideration therein expressed was paid by the said Moore, nor intended nor demanded to be paid, and the said sum of $8,295.89 was not, and is not, nor was, or is any part of it, due from the said Moore to the said Milner for purchase-money for said premises, but the said promissory note for that sum is wholly without any consideration whatever, and is for that reason wholly void.

The said pretended promissory note and the said mortgage mentioned in the said answer of the said Milner, in so much as the same purports to have been given for the security of the said sum of money expressed in the said promissory note, were made, executed, and delivered, with interest on the part as well of the said Milner as of the said Moore to

defraud the said creditors of the said Moore of their just and lawful claims, debts, and damages, and to hinder, delay, and defraud them in the collection of the same.

Wherefore both the said mortgage, as against the said creditors of the said Moore and also as against the said assignee, are utterly void and of no effect, and the said mortgage constitutes no lien whatever upon any of the said real estate described therein.

47 And by reason of the facts hereinbefore stated the said Milner has no vendor's lien upon the said seven tracts of land, nor upon any of them, for the payment of the sum of money mentioned in the said promissory note.

As to the statements of the said answer of the said John Milner, j'r, that he, the said John Milner, j'r, was surety for the said Moore to one Joseph C. Worthington in a note due January 1st, 1871, which was secured in said mortgage by a description of the debt, and that said mortgage was also given to indemnify said surety and that the said Milner has paid said debt, viz, $155.00 March 20th, 1872, and $1,383.93 May 19, 1873, and that said sums are yet due and unpaid to the said Milner, said William M. Meek, assignee, does not know and has not the means of ascertaining whether they are true or not, and therefore does not admit their truth, nor the truth of either of them, but demands that the said statements and each of them be proved upon the hearing of this cause.

As to statements contained in the subjoined paragraph of said answer and cross-petition of the said John Milner, j'r, the

48 said assignee William M. Meek does not know, and has not the means of knowing, whether they are true or not, and therefore does not admit their truth, nor the truth of either of them, but demands that the said statements and each of them be proved upon the hearing of the cause, namely:

"Defendent was and is surety for said A. A. Moore to John B. Moore upon a note for $270.00, dated about September 7th, 1871, bearing eight per cent. interest from date, which is also mentioned in said mortgage, and the same was also given to indemnify said defendant."

For further reply, said assignee denies that the said John Milner, j'r, was the bona fide of the said seven tracts of land, or either of them, but avers that the said pretended purchase was from the said Abram A. Moore, and was made under the circumstances hereinbefore stated, and was fraudulent, as hereinbefore stated, and by reason of the facts hereinbefore stated.

Said assignee denies, furthermore that the price fixed for said

49 land in said fraudulent purchase was all it was reasonably worth.

Said assignee avers that the said John Milner, j'r, previous to the election for assignee in bankruptcy for the said Abram A. Moore, presented and proved the whole of the said claim for eight thousand two hundred and ninety-five dollars and eighty-nine cents, mentioned in his said answer, and for which in said answer he claims the said mortgage from the said Abram A. Moore and wife to him is security, and at the election for assignee voted the whole of the said sum; wherefore, this assignee says that the said John Milner, j'r, did thereby surrender any security and lien by reason of said mortgage which he might otherwise have had (if any) for the payment of the said sum of money, or any part thereof.

The said assignee, therefore, prays that the said mortgage from said Moore and wife to the said John Milner, j'r, may be adjudged and decreed to be void and of no effect, and that the said Milner has not, by reason

of the same, nor otherwise, any lien whatever upon the said seven tracts of land in the bill in this cause described, nor upon either of them.

50 WILLIAM M. MEEK,
Assignee in Bankruptcy of Abram A. Moore,
By E. M. DE BRUIN AND H. L. MEEK,
His Solicitors.

THE STATE OF OHIO,
Highland Co., ss:

William M. Meek, assignee in bankruptcy of Abram A. Moore, being duly sworn, upon his said oath says that he believes the statements of the foregoing reply to be true.

W'M M. MEEK,
Assignee in Bankruptcy of Abram A. Moore.

Sworn to before me and signed in my presence by the above-named William M. Meek, assignee in bankruptcy of Abram A. Moore, this 6th day of August, A. D. 1873.

JA'S H. THOMPSON,
Register.

51 And afterwards, on the day and year last aforesaid, came the said John Milner, j'r, by his said solicitors, and filed in the clerk's office of the court aforesaid his certain motion to strike from the files the reply of said complainant to his answer herein, clothed in the words and figures following, to wit:

Motion.

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, bankrupt, W'm M. Meek, assignee in bankruptcy of the said Abram A. Moore, *vs.* CYRUS M. WALKER ET AL. } In bankruptcy.

Motion of said John Milner, j'r, to strike the reply of the said assignee from the files of this court.

This defendant moves to strike the said reply from the files of this court for the reason that it is in contravention to the 45th rule of practice in the courts of the United States for this district.

JOHN MILNER, J'R,
By CHA'S H. COLLINS & GEO. B. GARDNER,
Att'ys.

52 And afterwards, on the day and year last aforesaid, came the said John Milner, j'r, by his said solicitors, and filed in the clerk's office of the court aforesaid his certain rejoinder to the reply of the complainant herein, clothed in the words and figures following, to wit:

Rejoinder of J. Milner, jr.

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, bankrupt, William M. Meek, assignee in bankruptcy of the said Abram A. Moore, *vs.* CYRUS M. WALKER ET AL. } In bankruptcy.

The rejoinder of John Milner, j'r, to the reply of the assignee.

This defendant, now and at all times saving to himself and all manner of benefit or advantage of exceptions or otherwise that can or may be taken to the many errors, uncertainties, and improprieties in the said reply contained, for rejoinder thereto, or so much thereof as this
53 defendant is advised it is material or necessary for him to make answer to, answering, saith:

That this defendant hereby joins issue with the plaintiff and denies each and every allegation of fraud, however or in whatsoever manner alleged in said reply, so far as the said John Milner, j'r, is concerned.

He avers that said conveyance from said Moore and wife of the *day of the* 17th day of November, A. D. 1870, was made and delivered to him, for valuable consideration in law, and that he paid therefor the full value of said lands in the manner and form following, to wit: That is to say, he released to the said Abram A. Moore the sum of $4,000.00 which the said Moore then justly owed him; he also assumed to pay for the said Abram A. Moore the sum of $3,000.00 due from said Moore to said Henry A. Shepherd, with interest at eight per cent. from the 13th day of July, A. D. 1870, which was secured by a mortgage on tracts 1, 3, 4, & 5 of the lands mentioned in said deed from said Moore to Milner, upon which debt, due to said Shepherd, he has paid the
54 sum of $300.00. He also executed his note to the said Abram A. Moore for the sum of $10,000.00, due December 25th, 1870, which said note said Moore negotiated and traded off. He also executed his note to the said Abram A. Moore for the sum of $4,900.00, due December 25th, 1871, making a total consideration paid and agreed to be paid by this said defendant to the said Moore, as the consideration for the said lands, the sum of $2,900.00. This defendant avers that it is not true, as alleged by said plaintiff in said reply, that the said deed was made without no consideration whatever; the allegation is not true that no part of the consideration therein expressed has never been paid, and was not intended to be demanded or paid.

The said defendant denies that he procured the said deed to be made and delivered to him with intent to defraud the creditors of the said Moore, or that he accepted the same with any such intent, or to assist and enable the said Moore to defraud his creditors or any of them, or to hinder or delay his creditors or any of them. He denies that he well knew that *that* the said Moore, in making and delivering the said
55 deed to him, the said Milner, intended thereby to hinder, delay, and defraud his said creditors.

The defendant denies that the said deed is utterly void and of no effect, but avers and maintains that the said deed was valid in law and in equity, and passed the title to said lands from said Moore and wife to the said defendant, against all persons whomsoever.

As to the averments in the said reply in reference to the mortgage of date January 19th, A.D. 1872, and the notes secured thereby, the defendant denies each and every allegation in the said reply, wherein fraud or fraudulent intent is alleged as against the said Milner, and avers

and maintains that the said mortgage was for the considerations hereinbefore set up by this defendant in his answer to the said assignee, and for no other consideration whatsoever, and he re-affirms the allegations in his said answer in his behalf.

The said defendant says that he proved his claim against the said Abram A. Moore as a secured claim and not otherwise. That
56 he proved the same in the manner provided by the 22nd section of the bankrupt act as to proof of debts of security; that he claimed in said proof that he had a lien upon the said property.

He avers that he has in no way or manner released his said lien, and that in the proof of the same he did what the law compelled him to do, and in all things pertaining thereto acted by the advice of his counsel, and the consent of the register, and without any objection from any creditor.

Wherefore he avers and maintains that it is not true, as alleged by said assignee, that he has surrendered his security or lien, or any part thereof, by any act of his in the premises.

JOHN MILNER, J'R.
By CHAS. H. COLLINS & GEO. B. GARDNER,
His Attorneys.

STATE OF OHIO, *Highland Co., ss.*

John Milner, j'r, being duly sworn, says the above rejoinder and the matters therein stated are true, as he verily believes.

JOHN MILNER, J'R.

57 Sworn to before me and subscribed in my presence this 11th day of August, A. D. 1873.

J. H. THOMPSON,
Register.

Afterwards, to wit, on the day and year last aforesaid, came the defendant, Cyrus M. Walker, by Sloane and Beeson, his solicitors, and filed in the clerk's office of the court aforesaid his answer and reply to the answer of John Milner, j'r, in the words and figures following, to wit:

Separate answer of C. M. Walker to answer of John Milner, j'r.

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, A bankrupt, William M. Meek, assignee in bankruptcy of the said Abram A. Moore,
58 *vs.*
C. M. WALKER, H. A. SHEPHERD, T. H. Long, John Milner, j'r, Silas Routh, Samuel J. Moore, William W. Moore, j'r, William Moore, s'r, Thomas C. Moore, Joseph Cohn, J. N. Henry, Isaac Smith, Alexander Smith, J. W. Bell, Singer Manufacturing Company, Samuel Hixon, J. C. Santee, Glascock & Bro., D. C. Amberg, J. H. McMillen, W. P. Miller, P. A. Arthur, Patrick Collins, A. S. Amberg, Abram Conard, and A. B. Beard.

The separate answer and reply of C. M. Walker to the answer of John Milner, j'r, filed in this cause.

Cyrus M. Walker, (who is made a defendant in this cause by

59 the name C. M. Walker,) as to matters, things, and statements contained and set forth in the said answer of the said John Milner, j'r, denies and states as follows:

Prior to and on the 17th day of November, 1870, said Abram A. Moore was the legal owner, in fee-simple, and was in possession of the said seven tracts of land first described in the bill in this cause and mentioned in the answer of the said John Milner, j'r; but on the said 17th day of November, 1870, the said Moore and wife made and delivered to the said John Milner, j'r, a certain paper-writing of that date, in the form of a deed of general warranty, whereby the said Moore and wife pretended and professed to convey to the said Milner, in fee-simple, the said seven tracts of land; but the said deed was made and delivered by the said Abram A. Moore with intent thereby to hinder, delay, and defraud the then creditors of him, the said Abram A. Moore, (of whom the said Cyrus M. Walker was one,) of their just and lawful debts, claims, and damages against him, the said Abram A. Moore, and to hinder
60 and delay them, the said creditors, in the collection of the said debts and claims and damages.

The said deed was, moreover, made upon no consideration whatever, no part of the consideration therein expressed having been ever paid, nor, at the time of the making of the said deed, being intended to be demanded or paid. The said Abram A. Moore, at the time of the making and delivery of the said deed, was in failing circumstances, and was, in fact, insolvent, as he and the said Milner then well knew. And the said Milner procured the said deed to be made and delivered to him and accepted the same with intent to defraud, and to assist and enable the said Abram A. Moore to defraud the said creditors of him, the said Moore, of their just and lawful claims, debts, and damages against him, the said Moore, and to hinder and delay them, the said creditors, in the collection of their said debts, claims, and damages, he, the said Milner, then well knowing that the said Moore, in making and delivering the said deed to him, the said Milner, intended thereby to hinder, delay, and defraud, as aforesaid, the said creditors.

Wherefore the said Cyrus M. Walker says and maintains, that
61 the said deed, as against him and other then existing creditors of the said Moore, was and is utterly void and of no effect, and was, as against him, the said Cyrus M. Walker and the said other creditors, wholly ineffectual to pass the title out of the said Moore. The said Moore, up to the time of the levying of the said attachment at the suit of this defendant, mentioned in the bill of this cause, made nor attempted to make any other conveyance of the said tracts of land, nor any of them. So that it is not true, as alleged in the answer of the said Milner, that at the time of the levy of said attachment the said Abram A. Moore had not the legal title to, and did not own any of, the lands upon which the said attachment was levied.

And this defendant further avers and maintains that, because of the facts hereinbefore stated, the said deed is utterly void and of no effect, as against the said assignee, William M. Meek.

This defendant, further answering and replying to the statements and allegations of the said answer of the said Milner, denies that
62 there is anything legally due to the said Milner upon the said promissory note for (nominally) $8,295.89, dated January 19th, 1872, mentioned in the said answer of the said Milner. The said Milner procured and received the said hereinbefore deed from the said Moore and wife, as hereinbefore stated, and on the 19th and 20th days of January, 1872, had no other title, nor claim, or pretense of title, to the said

seven tracts of land, than such as the said deed gave him or authorized him to make.

On the said 19th day of January, 1872, the said Milner and wife executed to the said Abram A. Moore, for the pretended consideration of sixteen thousand dollars, a quitclaim deed, in due form of law, for the said seven tracts of land, but no part of the consideration therein expressed was paid by the said Moore, nor intended nor demanded to be paid, and the said sum of $8,295.89 was not and is not, nor was or is any part of it due from the said Moore to the said Milner for purchase-money for said premises, but the said promissory note for that sum is wholly without any consideration whatever, and is for that reason wholly void.

63 The said pretended promissory note and the said mortgage mentioned in the said answer of the said Milner, in so far as the same purports to have been given for the security of the said sum of money expressed in the said promissory note, were made, executed, and delivered, and were procured to be made, executed, and delivered, with intent on the part as well of the said Milner as of the said Moore to defraud the said creditors of the said Moore of their just and lawful claims, debts, and damages, and to hinder, delay, and defraud them in the collection of the same; wherefore both the said note and the said mortgage, as against this defendant and the said other creditors of the said Moore, and also as against the said assignee, are utterly void and of no effect, and the said mortgage constitutes no lien whatever upon any of the said real estate described therein. And by reason of the facts hereinbefore stated, the said Milner has no vendor's lien upon the said seven tracts of land, nor upon any of them, for the payment of the sum of money mentioned in said promissory note.

64 As to the statements of the said answer of the said John Milner, j'r, that he, the said John Milner, j'r, was surety for the said Moore to one Joseph C. Worthington, in a note due January 1st, 1871, which was secured in said mortgage by a description of the debt, and that said mortgage was also given to indemnify said surety, and that the said Milner has paid said debt, viz. $155.00, March 20th, 1872, and $1,383.93, May 19th, 1873, and that said sums are yet due and unpaid to the said Milner, this defendant, Cyrus M. Walker, does not know, and has not the means of ascertaining, whether they are true or not, and, therefore, does not admit their truth nor the truth of either of them, but demands that the said statements and each of them be proved upon the hearing of this cause.

As to the statements contained in the subjoined paragraph of the said answer of the said John Milner, j'r, this defendant, Cyrus M. Walker, does not know, and has not the means of ascertaining, whether they are true or not, and therefore does not admit their truth, nor the truth of either of them, but demands that the said statements and each of them be proved upon the hearing of this cause, namely: "Defendant

65 was and is also surety for said A. A. Moore to John B. Moore upon a note for $270, dated about September 7th, 1871, bearing eight per interest from date, which is also mentioned in said mortgage, and the same was also given to indemnify said defendant."

This defendant, further*ing* answering and replying, denies that the said John Milner, j'r, was the bona-fide purchaser of the said seven tracts of land or either of them, but avers that the said pretended purchase was from the said Abram A. Moore, and was made under the circumstances hereinbefore stated, and was fraudulent, as hereinbefore stated.

This defendant denies furthermore that the price fixed for said land in said fraudulent purchase was all it was reasonably worth.

This defendant claims that he has a valid lien by virtue of the levy of his said attachment upon the seven tracts of land firstly described in the bill filed in this cause for the payment of the said sum of $4,189 19, and costs of suit, $171.80, for which this defendant recovered
66 judgement against the said Abram A. Moore, as is fully stated in the answer of this defendant to the said bill, which answer was heretofore filed in this cause. And as to priority, he claims as in his said answer he claims. It is true the said judgement was recovered and rendered after the said Abram A. Moore had been declared a bankrupt, but the said case in which the said judgement was rendered was pending in the said court of common pleas of Clinton County, Ohio, at the time the said Moore's proceedings in bankruptcy were commenced and proceeded to judgement in said court, under the special permission and order of the said United States district court.

This defendant avers that the said John Milner, j'r, previous to the election for assignee in bankruptcy for the said Abram A. Moore, presented and proved the whole of said claims for eight thousand two hundred and ninety-five dollars and eighty-nine cents, mentioned in his said answer, and for which in said answer he claims the said mortgage from the said Abram A. Moore and wife to him in security, and at the
67 said election for assignee voted the whole of the said sum. Wherefore this defendant says that the said John Milner, j'r, did thereby surrender any security and lien by reason of said mortgage which he might otherwise have had (if any) for the payment of the said sum of money or any part thereof.

This defendant prays that the said mortgage from the said Moore and wife to the said John Milner, j'r, may be adjudged and decreed to be void and of no effect, and that the said Milner has not by reason of the same, nor otherwise, any lien whatever upon the said seven tracts of land in the bill in this cause described, nor upon either of them.

CYRUS M. WALKER,
By SLOANE & BEESON, *his Attorneys.*

STATE OF OHIO,
Highland Co., ss:

Cyrus M. Walker, the defendant named in the foregoing answer and reply, being duly sworn, upon his said oath says that he believes the statements of the said answer and reply to be true and the mat-
68 ters and things denied by the said answer and reply to be untrue.

C. M. WALKER.

Sworn to before me and signed in my presence by the above-named Cyrus M. Walker this 5th day of August, 1873.

J. H. THOMPSON, *Register.*

Afterwards, to wit, on the day and year last aforesaid, came the said defendant, Thomas H. Long, by his said solicitors, and filed in the clerk's office of the court aforesaid his certain reply to the answer of John Milner, j'r, herein, clothed in the words and figures following, to wit:

Reply of T. H. Long to answer of J. Milner, j'r.

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, A BANKRUPT, William M. Meek, assignee in the bankruptcy of the said Abram A. Moore,
vs.
69 C. M. WALKER, H. A. SHEPHERD, T. H. Long, John Milner, j'r, Silas Routh, Samuel J. Moore, William W. Moore, j'r, William Moore, s'r, Thomas C. Moore, Joseph Cohn, J. N. Henry, Isaac Smith, Alexander Smith, J. W. Bell, Singer Manufacturing Company, Samuel Hixon, J. C. Santee, Glascock & Bro., D. C. Amberg, J. H. McMillen, W. P. Miller, P. A. Arthur, Patrick Collins, A. S. Amberg, Abram Conard, and A. B. Beard.

70 The separate answer and reply of T. H. Long to the answer of John Milner, j'r, filed in this cause.

Thomas H. Long, (who is made a defendant in this cause by the name of T. H. Long,) as to the matters, things, and statements contained and set forth in the said answer of the said John Milner, j'r, denies, and states as follows:

Prior to and on the 17th day of November, 1870, the said Abram A. Moore was the legal owner, in fee-simple, and was in possession of the said seven tracts of land first described in the bill in this cause and mentioned in the answer of the said John Milner, j'r, but on the said 17th day of November, 1870, the said Moore and wife made and delivered to the said John Milner, j'r, a certain paper-writing of that date in the form of a deed of general warranty, whereby the said Moore & wife pretended and professed to convey to the said John Milner, j'r, in fee-simple, the said seven tracts of land. But the said deed was made and delivered by the said Abram A. Moore with intent thereby to hinder, delay, and defraud the then creditors of him, the said Abram A.
71 Moore, (of whom the said Thomas H. Long was one,) of their just and lawful debts, claims, and damages against him, the said Abram A. Moore, and to hinder and delay them, the said creditors, in the collection of the said debts, claims, and damages.

The said deed was moreover made upon no consideration whatever, no part of the consideration therein expressed having been ever paid, nor at the time of the making of the said deed being intended to be demanded or paid.

The said Abram A. Moore, at the time of the making and delivering of the said deed, was in failing circumstances, and was in fact insolvent, as he and the said John Milner, j'r, then well knew, and the said Milner procured the said deed to be made and delivered to him, and accepted the same with intent to defraud and to assist and enable the said Abram A. Moore to defraud the said creditors of him, the said Moore, of their just and lawful debts, claims, and damages against him, the said Moore, and to hinder and delay them, the said creditors, in the collection of their said debts, claims, and damages, he, the said Milner, then well
72 knowing that the said Moore, in making and delivering the said

deed to him, the said Milner, intended thereby to hinder, delay, and defraud, as aforesaid, the said creditors.

Wherefore the said Thomas H. Long says and maintains that the said deed, as against and other then existing creditors of the said Moore, was and is utterly void and of no effect, and was, as against him, the said Thomas H. Long and the said other creditors, wholly inefficient to pass the title out of the said Moore.

The said Moore, up to the time of the levying of the said attachment, at the suit of this defendant mentioned in the bill in this cause, made nor attempted to make any other conveyance of the said tracts of land, nor of any of them, so that it is not true, as alleged in the answer of the said Milner, that at the time of the levy of the said attachment the said Abram A. Moore had not the legal title to, and did not own any of, the lands upon which the said attachment was levied.

And this defendant further avers and maintains that, because
73 of the facts hereinbefore stated, the said deed is utterly void and of no effect as against the said assignee, William M. Meek.

This defendant, further answering and replying to the statements and allegations of the said answer of the said Milner, denies that there is anything legally due to the said Milner upon the said promissory note for (nominally) $8,295.89, dated January 19th, 1872, mentioned in the said answer of the said Milner.

The said Milner received and procured the said hereinbefore-mentioned deed from the said Moore and wife, as hereinbefore stated; and on the 19th and 20th days of January, 1872, had no other title, nor claim or pretense of title, to the said seven tracts of land than such as the said deed gave him or authorized him to make.

On the said 19th day of January, 1872, the said Milner and wife executed to the said Abram A. Moore, for the pretended consideration of sixteen thousand dollars, a quit claim deed in due form of law for the said seven tracts of land. But no part of the consideration
74 therein expressed was paid by the said Moore, nor intended nor demanded to be paid. And the said sum of $8,295.89 was not, and is not, nor was or is any part of it due from the said Moore to the said Milner, for purchase-money for said premises, but the said promissory note for that sum is wholly without any consideration whatever, and is for that reason wholly void.

The said pretended promissory note and the said mortgage in the said answer of the said Milner, in so far as the same purports to have been given for the security of the sum of money expressed in the said promissory note, were made, executed, and delivered with intent, on the part as well *as* of the said Milner as of the said Moore, to defraud the said creditors of the said Moore of their just and lawful claims, debts, and damages, and to hinder, delay, and defraud them in the collection of the same. Wherefore both the said note and the said mortgage as against this defendant and the said other creditors of the said Moore, and also as against the said assignee, are wholly void and of no
75 effect, and the said mortgage constitutes no lien whatever upon any of the said real estate described therein; and by reason of the facts hereinbefore stated, the said Milner has no vendor's lien upon the said seven tracts of land, nor upon any of them, for the payment of the sum of money mentioned in the said promissory note.

As to the statements of the said answer of the said John Milner, j'r, that he, the said John Milner, j'r, was surety for the said Moore to one Joseph C. Worthington in a note due January 1st, 1871, which was secured in said mortgage by a description of the debt, and that the said

mortgage was also given to indemnify said surety, and that the said Milner has paid said debt, viz, $155.00, March 20th, 1872, and $1,383 23/100, May 19th, 1873, and that said sums are yet due and unpaid to the said Milner, this defendant, Thomas H. Long, does not know, and has not the means of ascertaining whether they are true or not, and therefore does not admit their truth nor the truth of either of them, but demands
76 that the said statements, and each of them, be proved upon the hearing of this cause.

As to the statements contained in the subjoined paragraph of the said answer of the said John Milner, j'r, this defendant, Thomas H. Long, does not know, and has not the means of ascertaining, whether they are true or not, therefore does not admit their truth nor the truth of either of them, but demands that the said statements and each of them be proved upon the hearing of this cause, viz:

"Defendant was and is also surety for said A. A. Moore to John B. Moore upon a note for $270.00, dated about September 7th, 1871, bearing eight per cent. interest from date, which is also mentioned in said mortgage, and the same was also given to indemnify said defendant."

This defendant, further answering and replying, denies that the said John Milner, j'r, was the bona-fide purchaser of the said seven tracts of land, or either of them, but avers that the said pretended purchase was from the said Abram A. Moore, and was made under the
77 circumstances hereinbefore stated, and was fraudulent as hereinbefore stated, and by reason of the facts hereinbefore stated.

The defendant denies, furthermore, that the price fixed on said land in said fraudulent purchase was all it was reasonably worth.

This defendant claims that he has a valid lien by virtue of the levy of his said attachment upon the seven tracts of land firstly described in the bill filed in this cause, for the payment of the said sum of $1,200.00, and costs of suit, $81.45, for which this defendant recovered judgement against the said Abram A. Moore, as is fully stated in the answer of this defendant to the said bill, which answer was heretofore filed in this cause; and as to priority he claims as in his said answer he claimed. It is true the said judgement was recovered and rendered after the said Abram A. Moore had been declared a bankrupt: but the said case in which the said judgement was rendered was pending
78 in the said court of common pleas of Clinton County, Ohio, at the time the said Moore's proceedings in bankruptcy were commenced, and proceeded to judgement in said court by the special permission and order of the said United States district court.

This defendant avers that the said John Milner, j'r, previous to the election for assignee in bankruptcy for the said Abram A. Moore, presented and proved the whole of the said claim for eight thousand two hundred and ninety-five dollars and eighty-nine cents, mentioned in his said answer, and for which in said answer he claims the said mortgage from the said Abram A. Moore and wife to him is security; and at the said election for assignee voted the whole of the said sum. Wherefore this defendant says that the said John Milner, j'r, did thereby surrender any security and lien by reason of said mortgage, which he might otherwise have had, if any, for the payment of the said sum of money, or any part thereof.

This defendant prays that the said mortgage from the said
79 Moore & wife to the said John Milner, j'r, may be adjudged and decreed to be void and of no effect, and that the said Milner has not, by reason of the same, nor otherwise, any lien whatever upon

the said seven tracts of land in the bill in this cause described, nor upon either of them.

THOMAS H. LONG,
By SLOANE & BEESON,
His Solicitors.

STATE OF OHIO,
Highland Co., ss:

Thomas H. Long, the defendant named in the foregoing answer and reply, being duly sworn, upon his said oath says that he believes the statements of the said answer and reply to be true, and the matters and things denied by his said answer and reply to be untrue.

THOMAS H. LONG.

Sworn to before me and signed in my presence by the above-named Thomas H. Long this 5th day of August, 1873.

JA'S H. THOMPSON,
Register.

80 Afterwards, on the day and year last aforesaid, came the said John Milner, j'r, by his said solicitors, and filed in the clerk's office of the court aforesaid his certain demurrer to the reply of C. M. Walker herein, clothed in the words and figures following, to wit:

Demur'er.

In the district court of the United States for the southern district of Ohio.

WM M. MEEK, ASSIGNEE IN BANKRUPTCY of Abram A. Moore, *vs.* JOHN MILNER, J'R, ET AL.	In bankruptcy.

Demur'er of John Milner, j'r, to the reply of C. M. Walker to the answer of the said John Milner, j'r.

The defendant, John Milner, j'r, demurs to the said reply of said C. M. Walker, and assign' the following as his grounds of demurrer, which appear upon the face of the said reply.

I. First. That the facts stated in the said reply do not constitute a defence or a claim in law against the lien of the said John Mil-
81 ner, j'r, in the bankruptcy court, in this, to wit: It is shown by the said reply that the deed from Moore to Milner, which is alleged to be fraudulent, and the mortgage from Moore to Milner, which is alleged to be fraudulent, were each made more than six months prior to the institution of the proceedings in bankruptcy.

II. Second. This court sitting as a bankruptcy court has no jurisdiction of the subject of the action, in this, to wit: It is not aver'ed that the said alleged fraudulent transactions were in fraud of the bankrupt act, and were made within six months prior to the institution of the proceedings in bankruptcy.

III. Third. The said defendant, C. M. Walker, hath no legal capacity to test the validity of the lien of John Milner, j'r, in this bankruptcy court, in this, to wit: That it appears by the said reply that at the time of the levy of his said attachment the lands levied upon were of record in the name of John Milner, j'r, and the legal title thereto was in him,

and it does not appear that the State court has found by its decree the lands to belong to the said bankrupt, A. A. Moore. It is not averred that a creditors' bill has been filed in the State court wherein
82 judgement has been obtained, setting out the alleged fraudulent transfers, and that said court has found by its decree that the same were fraudulent, and that said attachment and judgement were liens upon said lands.

IV. Fourth. The bankruptcy court has not jurisdiction to try the questions made by the said reply; that the same are within the province of the State court to the exclusion of the bankrupt court.

V. Fifth. It does not appear by the said transcript of the record, which is made a part of the answer and reply of the said C. M. Walker by the return of the attachment therein, that the real estate levied upon by the said attachment was attached as the property of the said Abram A. Moore.

VI. Sixth. That the affidavit for the attachment in this case, as appears from the transcript, was not sufficient in law, in this, to wit: That the said affidavit is in the alternative, and does not state what act of the said Moore entitled the said Walker to his said attachment.

VII. Seventh. That the transcript of the record, attached to
83 and made a part of the said answer and reply in this case, shows that the motion of the said Abram A. Moore, the bankrupt, to dissolve the said attachment, made pending said suit and before judgement, for the reason that the affidavit therein was insufficient and that the facts stated therein were not true, was, on the motion of the said Walker, by his attorneys, stricken from the files of the said court of common pleas of Clinton County, on the ground that the court had not, since the defendant, Moore, had been adjudged a bankrupt in the district court of the United States, jurisdiction to dispose of the questions raised by the said motion to dissolve the attachment, and thereby remitted all questions, as to the validity of the said attachment and liens by virtue of the same, to the adjudication of this court.

VIII. Eighth. The allegation that John Milner, j'r, proved his debt, and voted for the assignee, in manner and form as stated in said reply, is not a defence to his said lien, and the only objection that can be made, if any, to his proving his debt and voting is to the validity of the election, and does not affect his lien.

84 IX. Ninth. It is not averred that any objection was made to his voting; it was not averred that it was not generally known by the creditors present that he was voting as a secured creditor, and was claiming to be a lien-holder either at the election or afterwards; it is not averred that Milner proved his claim as an unsecured claim and in terms abandoned his lien.

X. Tenth. The question as to whether the said transactions between Milner and Moore were fraudulent or not can only be raised by the assignee in his petition, and then must have been within six months prior to the institution of the proceedings in bankruptcy.

XI. Eleventh. At the time of the levying of the said alleged attachment, the land standing in the name of John Milner, j'r, the defendant, C. M. Walker, acquired no lien by said attachment on account of the interest subsequently acquired by Moore, the bankrupt, in said attached property, it *is* not being averred that by the finding of the court from whence said attachment issued the said lands were found to be
85 Moore's at the time of *of* the said levy of said attachment.

XII. Twelfth. The judgement obtained after the adjudication of

bankruptcy, though, as averred, by permission of this court, created no lien in the favor of the said C. M. Walker.

XIII. Thirteenth. The defendant, C. M. Walker, failing to institute proceedings in bankruptcy against the said A. A. Moore, but proceeding in a State court to final judgement upon his claim, is estopped from litigating the same matter in this court.

XIV. Fourteenth. By section two (2) of the bankrupt act, any action or proceeding in law or equity touching the rights of John Milner, j'r, to the lands in the papers on file mentioned is barred, more than two years having elapsed from the date of the deed from Abram A. Moore, bankrupt, to John Milner, j'r, which is claimed to have been fraudulent as to creditors until the said A. A. Moore was adjudged a bankrupt, the date of said deed being Nov. 17th, 1870, and the adjudication of bankruptcy Nov. 23rd, 1872.

XV. Fifteenth. It appears by the records in this case that the
86 alleged fraud, if any fraud there was, was discovered to said C. M. Walker as early at least as the 20th day of December, A. D. 1870, being more than two years from said discovery to the filing of the petition by the assignee in this cause, wherefore the right of both the assignee and the said C. M. Walker, and all other creditors, is barred by the limitations of the bankrupt act.

XVI. Sixteenth. Said John Milner, j'r, further demurs to said answe and reply, because this court in this action has no jurisdiction to try and determine the matters of difference between the said Walker and said Milner; the claims of both said Walker and said Milner being adverse to said assignee, and being questions involving adverse claims to property.

Wherefore, for reasons of the premises above stated, the defendant, John Milner, j'r, humbly prays judgement of this honorable court, whether he shall be compelled to put in any further answer to the answer and reply of said C. M. Walker.

The undersigned, attorneys for John Milner, j'r, certify that
87 in their opinion, the points made in the foregoing demurrer are well founded in law, and are presented in good faith for the purpose of obtaining the opinion of the court, upon argument on her questions therein presented.

GEO. B. GARDER,

Attorneys.

John Milner, j'r, being duly sworn, deposes and says that this his said demurrer is not interposed for vexation or delay, but in belief that it is well taken.

JOHN MILNER, J'R.

Sworn to before me and subscribed in my presence this 5th day of August, A. D. 1873.

JAS. H. THOMPSON,
Register.

88 And afterwards, on the day and year last aforesaid, came the said John Milner, j'r, by his solicitors, and filed in the clerk's office of the court aforesaid his certain answer to the answer and reply of C. M. Walker herein, clothed in the words and figures following, to wit:

Answer of John Milner, j'r, to the answer of C. M. Walker.

In the district court of the United States for the southern district of Ohio.

WM M. MEEK, ASSIGNEE OF A. A. MOORE, bankrupt,
vs.
CYRUS M. WALKER ET AL.

Answer of John Milner, j'r, to the answer and reply of Cyrus M. Walker.

This defendant, John Milner, j'r, reserving to himself all benefit of exception to the answer and reply of said Cyrus M. Walker, and not waiving his demur'er filed by him, to said answer and reply, but relying thereon for answer to so much of said answer and reply as charges fraud upon the said John Milner, j'r, answers and saith—

89 That as to said allegation that the said deed from Moore to Milner was made without any consideration whatever, and that no part of the consideration therein expressed had ever been paid or was intended to be demanded or paid, the said allegation is not true in fact.

This defendant avers, on the contrary, that at the time of the execution of said deed the said Moore was indebted to him in the sum of $4,000.00; that in addition thereto he has assumed the payment for said Moore of a mortgage which was at that time a subsisting lien upon the said land for the sum of $3,000.00, payable to Henry A. Shepherd, dated 13th July, A. D. 1870, and due 13th July, A. D. 1871, on tracts one, three, four, and five of said lands, upon which he has paid the said Shepherd the sum of $300.00. The said defendant also executed to the said A. A. Moore his two several promissory notes, one for $10,000.00, due Dec. 25th, A. D. 1870, and one for $4,900.00, due Dec. 25th, A. D. 1871, making the total consideration for said land $21,900.00, all of which on the part of said Milner was in good faith.

90 And he denies each and every allegation of said answer and reply, in which it is averred that said Milner procured the said deed to be made to him, and accepted the same with intent to defraud and to assist and enable the said Moore to defraud his creditors, or any of them.

This defendent admits, that on the 19th day of January, A. D. 1872, he executed to said A. A. Moore the deed in said answer and reply mentioned, but denies all the allegation of the said answer and reply as to the consideration thereof, but on the contrary avers that the statements contained in the answer of said John Milner, j'r, to the petition of the assignee in this case are true, and he denies each and every allegation of fraud in that behalf upon his part.

JOHN MILNER, J'R.
By G. B. GARDNER, AND
C. H. COLLINS, *his Att'ys.*

John Milner, j'r, being duly sworn, says the above pleading and the allegations therein are true.

JOHN MILNER, J'R.

91 Sworn to & subscribed in my presence this August 5th, 1873.

JA'S H. THOMPSON,
Register.

And afterwards, on the day and year last aforesaid, came the said John Milner, j'r, by his said solicitors, and filed in the clerk's office of the court aforesaid his certain demurrer to the reply of Thomas H. Long herein, clothed in the words and figures following, to wit:

Demurrer of J. Milner, j'r, to reply of Thomas H. Long.

The district court of the United States for the southern district of Ohio.

WM M. MOORE, ASSIGNEE OF ABRAM A. MOORE, bankrupt, *vs.* JOHN MILNER, J'R, ET AL.	In bankruptcy.

Demurrer of John Milner, j'r, to the reply of Thomas H. Long to the answer of the said John Milner, j'r.

The defendant, John Milner, j'r, demurs to the said reply of said Thomas H. Long, and assigns the following as his grounds of
92 demurrer, which appear upon the face of the said reply:

I. First. That the facts stated in the said reply do not constitute a defence or a claim in law against the lien of the said John Milner, j'r, in the bankruptcy court, in this, to wit: It is shown by the said reply that the deed from Moore to Milner, which is alleged to be fraudulent, and the mortgage from Moore to Milner, which is alleged to be fraudulent, were each made more than six months prior to the institution of the proceedings in bankruptcy.

II. Second. This court, sitting as a bankruptcy court, has no jurisdiction of the subject of the action in this, to wit: It is not averred that the said alleged fraudulent transactions were in fraud of the bankrupt act, and were made within six months prior to the institution of the proceedings in bankruptcy.

III. Third. The said defendant, Thomas H. Long, has no legal capacity to test the validity of the lien of John Milner, j'r, in this bankrupt court in this, to wit: That it appears by the said reply that at the time of the levy of his said attachment the lands levied upon were of
93 record in the name of John Milner, j'r, and the legal title thereto was in him, and it does not appear that the State court has found by its decree the lands to belong to the said bankrupt, A. A. Moore. It is not averred that a creditor's bill has been filed in the State court, or any other court, wherein judgment has been obtained, setting out the alleged fraudulent transfers, and that the said court has found by its decree that the same were fraudulent, and that said attachment and judgements were liens upon said lands.

IV. Fourth. The bankruptcy court has no jurisdiction to try the questions made by the said reply; that the same are within the province of the State court to the exclusion of the bankruptcy court.

V. Fifth. It does not appear by the said transcript of the record, which is made a part of the answer and reply of the said Thomas H. Long, by the return of the attachment therein, that the real estate levied upon by the said attachment was attached as the property of the said Abram A. Moore.

VI. Sixth. That the affidavit for the attachment in this case, as
94 appears from the transcript, was not sufficient in law, in this, to wit: That the said affidavit is in the alternative, and does not

state what act of the said Moore entitled the said Long to his said attachment.

VII. Seventh. That the transcript of the record, attached to and made a part of the said answer and reply in this case, shows that the motion of the said Abram A. Moore, the bankrupt, to dissolve the said attachment, made pending said suit, and before judgement, for the reason that the affidavit therein was insufficient, and that the facts stated therein were not true, was, on motion of the said Long, by his attorneys, stricken from the files of the said court of common pleas of Clinton County, Ohio, on the ground that the court had not, since the defendant, Moore, had been adjudged a bankrupt in the district court of the United States, jurisdiction to dispose of the questions raised by the said motion to dissolve the attachment, and thereby remitted all questions as to the validity of the said attachment and liens by virtue of the same to the adjudication of this court.

VIII. Eighth. The allegation that John Milner, j'r, proved his
95 debt and voted for the assignee in manner and form as stated in said reply, is not a defence to his said lien, and the only objection that can be made, if any, to his proving his debt and voting is to the validity of the election, and does not affect his lien. In re Noble 3 B. R., 25.

IX. Ninth. It is not averred that any objection was made to his voting; it is not averred that it was not generally known by the creditors present that he was voting as a secured creditor and was claiming to be a lien holder either at the election or afterwards; it is not averred that Milner proved his claim as an unsecured claim, and in terms abandoned his lien.

X. Tenth. The question as to whether the said transactions between Milner and Moore were fraudulent or not can only be raised by the assignee in his petition, and then such transactions must have been within six months prior to the institution of the proceedings in bankruptcy.

XI. Eleventh. At the time of the levying of the said alleged attachment, the land standing in the name of John Milner, j'r, the defendant,
Thomas H. Long, acquired no lien by said attachment on ac-
96 count of the interest subsequently acquired by Moore, the bankrupt, in said attached property, it not being averred that, by the finding of the court from whence said attachment issued, the said lands were found to be Moore's at the time of the said levy of said attachment.

XII. Twelfth. The judgement obtained after the adjudication of bankruptcy, though, as averred, by the permission of this court, created no lien in the favor of the said Thomas H. Long.

XIII. Thirteenth. The defendant, Thomas H. Long, failing to institute proceedings in bankruptcy against the said A. A. Moore, but proceeding in a State court to final judgement upon his claim, is estopped from litigating the same matter in this court.

XIV. Fourteenth. By section two of the bankrupt act, any action or proceeding in law or equity touching the rights of John Milner, j'r, to the lands in the papers on file mentioned is barred, more than two years having elapsed from the date of the deed from Abram A. Moore, bankrupt, to John Milner, j'r, which is claimed to have been fraudulent as to
creditors, until the said A. A. Moore was adjudged a bankrupt;
97 the date of said deed being Nov. 17, 1870, and the adjudication of bankruptcy Nov. 23rd, 1872.

XV. Fifteenth. It appears by the records in this case that the alleged

waiving his demurrer filed by him to said answer and reply as charges fraud upon said John Milner, j'r, answers and saith:

That as to said allegation that the said deed from Moore to Milner was made without any consideration whatever, and that no part of the consideration therein expressed had ever been paid, or was
100 intended to be demanded or paid, the said allegation is not true in fact.

This defendant avers, on the contrary, that at the time of the execution of said deed the said Moore was indebted to him in the sum of $4,000.00; that in addition thereto he has assumed the payment for said Moore of a mortgage, which was at that time a subsisting lien upon the said land, for the sum of $3,000.00, payable to Henry A. Shepherd, dated 13th of July, A. D. 1870, and due 13th of July, A. D. 1871, on tracts one, three, four, and five, of said lands, upon which he has paid the said Shepherd the sum of $300.00. The said defendant also executed to the said A. A. Moore his two several promissory notes, one for $10,000.00, due Dec. 25th, 1870, and one for $4,900.00, due Dec. 25th, 1871, making the total consideration for said land of $21,900.00, all of which, on the part of said Milner, was in good faith, and he denies each and every allegation of said answer and reply in which it is averred that said Milner procured the said deed to be made and delivered to him and accepted the same with intent to defraud, and to assist and enable the said Moore to defraud, his creditors or any of them.

101 The defendant admits that on the 19th day of January, A. D. 1872, he executed to said A. A. Moore the deed in said answer and reply mentioned, but denies all the allegations of the said answer and reply as to the consideration thereof, but on the contrary avers that the statements contained in the answer of said John Milner to the petition of the assignee in this case are true, and he denies each and every allegation of fraud in that behalf upon his part.

JOHN MILNER, J'R,
By GEO. B. GARDNER, AND
C. H. COLLINS,
His Attorneys.

John Milner, j'r, being duly sworn, says the above pleading and the allegations therein are true.

JOHN MILNER, J'R.

Sworn to and subscribed before me this August 5th, 1873.
J. H. THOMPSON,
Register.

102 And afterwards, on the day and year last aforesaid, there was filed in the clerk's office of the court aforesaid a certain paper, clothed in the words and figures following, to wit:

Request of J. Milner, j'r, to have matter certified up to d. court.

In the district court of the United States for the southern district of Ohio. In chancery.

To the honorable James H. Thompson, register in bankruptcy, to whom the petition of W'm M. Meek, assignee of A. A. Moore, bankrupt, vs. C. M. Walker and others, has been referred:

The undersigned, John Milner, j'r, having filed legal objections, in the form of demurrers, to the replies of C. M. Walker and Thomas H. Long

in this case to the answer of said John Milner, j'r, requests that the points made by said demurrers, as shown by the same on file, be adjourned into the district court for hearing and argument, and that no further steps be taken by the said register in said cause until the opinion of said court is obtained upon the questions raised by said
103 demurrers, and that said register shall certify the said matters with said demurrers to said district court, and stay proceedings until the same is heard by said court; the said John Milner, j'r, hereby claiming that said questions are preliminary questions, to be settled before the taking of testimony in this cause, and not consenting that the register may pass upon the same, and not waiving any of his rights of appeal or exceptions to any opinion of the district court in cases where such appeal or exceptions are allowed. He asks that this request be entered on the minutes of said register and be allowed and certified as aforesaid.

JOHN MILNER, J'R,
By GEO. B. GARDNER &
C. H. COLLINS,
His Att'ys.

Which paper was received and filed, and is herein above entered on the minutes; but the said register refuses to adjourn said cause into the district court upon the papers on file; to which ruling of the register said John Milner, j'r, excepts, and prays that his exception may be entered herein, which is done.

104 Afterwards, to wit, on the day and year last aforesaid, the defendant, William W. Moore, j'r, by Doan & White, his attorneys, filed in the office of the clerk of our said court here his answer and reply to the bill of W'm M. Meek and the answer of John Milner, j'r, in the words and figures following, to wit:

Answer of W'm W. Moore, j'r, to bill of W'm M. Meek, & answer of J. Milner, j'r.

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, BANKrupt, William M. Meek, asssignee in bankruptcy of A. A. Moore,
vs.
CYRUS M. WALKER ET AL. DEF'TS.

Separate answer and reply of William W. Moore, j'r, (one of the defendants in the foregoing cause,) to the bill of W'm M. Meek and the answer of John Milner, j'r, filed in this cause.

W'm W. Moore, j'r, as to the matters, things, and statements contained and set forth in the said answer of the said John Milner, j'r, denies and states as follows:

105 Prior to and on the 17th day of November, A. D. 1870, the said Abram A. Moore was the legal owner in fee-simple and was in possession of the seven tracts of land first described in the bill filed in this cause and mentioned in the answer of the said John Milner, j'r; but on the said 17th day of Nov., A. D. 1870, the said Moore and wife

made and delivered to the said John Milner, j'r, a certain paper writing of that date, in the form of a deed of general warranty, whereby the said Moore and wife pretended and confessed to convey to the said Milner, in fee simple, the said seven tracts of land. But the said deed was made and delivered by the said Abram A. Moore with intent thereby to hinder, delay, and defraud the then creditors of the said Abram A. Moore (of whom the said defendant was one) of their just and lawful debts, claims, and damages against him the said A. A. Moore, and to hinder and delay them, the said creditors, in the collection of said debts, claims, and damages.

The said deed was made moreover upon no consideration whatever, no part of the consideration therein expressed having been
106 paid, nor at the time of making said deed being intended to be demanded or paid. The said A. A. Moore, at the time of making and the delivery of said deed, was in failing circumstances, and was in fact insolvent, as he and the said Milner then well knew; and the said Milner procured said deed to be made and delivered to him, and he, the said Milner, accepted the same with intent to defraud, and to assist and enable the said A. A. Moore to defraud, the said creditors of him the said Moore of their just and lawful debts, claims, and damages against him, the said Moore, and to hinder and delay them, the said creditors, in the collection of their said debts, claims, and damages, he, the said Milner, then well knowing that the said Moore, in making and delivering the said deed to him, the said Milner, intending thereby to hinder, delay, and defraud as aforesaid the said creditors.

Wherefore, the said W'm W. Moore says and maintains that the said deed, as against him and other then existing creditors of the said
107 Moore, was and is utterly void and of no effect, and was, as against him, the said W'm W. Moore, j'r, and the said other creditors, wholly inefficient to pass the title out of the said Moore.

This defendant further avers and maintains that, because of the facts herein before stated, the said deed is utterly void and of no effect as against the said assignee W'm M. Meek.

This defendant, further answering and replying to the statements and allegations of the said answer of the said Milner, denies that there is anything legally due to the said Milner upon the said promissory note (nominally) for $8,295.89, dated January 19th, A. D. 1872, mentioned in the said answer of the said Milner.

The said Milner received and procured the said deed hereinbefore mentioned from the said Moore and wife, as hereinbefore stated; and on the 19th & 20th days of January, A. D. 1872, had no other title or claim or pretense of title to the said seven tracts of land than such as the said deed gave him or authorized him to make. On the 19th day of January, A. D. 1872, the said Milner and wife executed to the said A. A. Moore, for the pretended consideration of sixteen thousand
108 dollars, a quit-claim deed, in due form of law, for the said seven tracts of land, but no part of the consideration therein expressed was paid by the said Moore, nor intended nor demanded to be paid, and the said sum of $8,290.$\frac{89}{100}$ was not and is not, nor was or is any part of it due from the said Moore to the said Milner for purchase for said premises, but the said promissory note is wholly without any consideration whatever, and is for that reason wholly void.

The said pretended promissory note and the said mortgage in the said answer of the said Milner, in so far as the same purports to have been given for the security of the sum of money expressed in the said promissory note, were made, executed, and delivered with intent on the part

as well of the said Milner as of the said Moore to defraud the said creditors of the Moore of their just and lawful debts, claims, and damages, and to hinder, delay, and defraud them in the collection of the same. Wherefore, both the said note and the said mortgage, as against this defendant and the said other creditors of the said Moore, and also as against the said assignee, are wholly void and of no effect; and the
109 said mortgage constitutes no lien whatever upon any of the said real estate described therein, and by reason of the facts hereinbefore stated, the said Milner has no vendor's lien upon the said seven tracts of land, nor upon any of them for the payment of the sum of money mentioned in the said promissory note.

As to the statements of the said answer of the said John Milner, j'r, that he, the said John Milner, j'r, was surety for the said Moore to one Joseph Worthington, on a note due Jan'y 1st, A. D. 1871, which was secured in said mortgage by a description of said debt, and that the said mortgage was also given to indemnify said surety, and that the said Milner has paid said debts, viz, $155.00, March 20, A. D. 1872, and $1,383.99 May 19th, A. D. 1873; and that the said sums are yet due and unpaid to the said Milner. This defendant, W'm W. Moore, j'r, does not know and has not the means of ascertaining whether they are true or not, and therefore does not admit their truth, nor the truth of either of them, but demands that the said statements and each of them be proved upon the hearing of this case.

As to the statements of the said Milner that he, the said Milner,
110 was surety for the said A. A. Moore to John B. Moore, upon a note for $270.00, dated about Sept. 7th, A. D. 1871, bearing eight per cent. interest from date, this defendant does not know and has not the means of ascertaining whether they are true or not, therefore does not admit their truth nor the truth of either of them, but asks that the said statements, and each of them, be proved upon the hearing of this case.

This defendant, further answering and replying, denies that the said John Milner, j'r, was the bona fide purchaser of the said seven tracts of land or of either of them, but avers that the said pretended purchase was from the said A. A. Moore, and was made under the circumstances hereinbefore stated, and was fraudulent as hereinbefore stated, and by reason of the facts hereinbefore stated.

Defendant claims that the price fixed for said land in said fraudulent purchase was all it was reasonably worth.

This defendant further avers that the said John Milner, j'r, previous to the election for assignee in bankruptcy for the said A. A. Moore, presented and proved the whole of said claim for $8,295.89, mentioned
111 in his said answer, and for which in said answer he claims the said mortgage from the said A. A. Moore and wife to him is security; and at the said election for assignee voted the whole of the said sum.

Wherefore, this defendant says that the said John Milner, j'r, did thereby surrender any security and lien, by reason of said mortgage, which he might otherwise have had (if any) for the payment of said sum of money or any part thereof.

This defendant further answers to said bill, and answering and replying to the said answer of the said John Milner, j'r, says, that by the consideration of the court of common pleas in and for the county of Clinton and State of Ohio, at its November term, A. D. 1871, (said term commencing November 20th, A. D. 1871,) in a certain action thereby pending in said court, wherein Samuel J. Moore, as administrator, of the estate of Elijah Haworth, was plaintiff, and Abram A. Moore (for whom

the said W'm M. Meek is now assignee in bankruptcy) and this defendant were defendants. And on the 1st day of December, A. D. 1871, a judgement was rendered by said court in favor of the said Samuel J. Moore as adm'r, &c., and this defendant, as his surety, in the sum of $730.62 and costs of suit taxed at $.

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That the action in which the aforesaid judgement was rendered was founded upon two several promissory notes bearing date of August 25th, A. D. 1870, the one calling for the sum of $613.50 made by the said A. A. Moore as principal, and this defendant was surety, and due nine months after date. The other, calling for the sum of $80.00, made by the said A. A. Moore as principal, and this defendant as surety, to the said Samuel J. Moore, as administrator of Elijah Haworth, (the first note also being made to the said Samuel J. Moore as administrator, &c.,) and due four months after the date thereof.

This defendant was surety only on said notes.

That afterwards this defendant was compelled to pay off and satisfy, and he did pay off and satisfy, the aforesaid judgements so rendered as aforesaid against the said A. A. Moore as principal and this defendant as surety, and all the costs of said suit. That at the time he so paid off and satisfied said judgements and costs as aforesaid, the said judgements and costs were liens on the said real estate of the said A. A. Moore, described in the bill of the said assignee in this case filed as and from the first day of the term of the court at which said judgement was obtained, to wit, Nov. 20, A. D. 1871.

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That by paying off and satisfying said judgement as aforesaid, this defendant became entitled to all the rights, remidies, and liens against the said Abram A. Moore that the plaintiff in said action was entitled to under the statutes of the State of Ohio.

Wherefore this defendant prays that the said mortgage from the said Moore and wife to the said John Milner, j'r, may be adjudged and decreed to be void and of no effect; and that the said Milner has not by reason of the same nor otherwise, no lien whatever upon the said seven tracts of land in the said bill described, nor upon any of them. And further, that the amount of money so as aforesaid by him, the said W'm W. Moore, paid for the said A. A. Moore to the said Samuel J. Moore, as adm'r, &c., on the judgement as aforesaid, together with the interest thereon from the day of its payment, may be decreed and ordered to be paid to him, in the order of priority that may be determined on, out of the proceeds of any sale herein made of the premises in the bill described, and that he may recover his costs in that behalf expended.

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W'M W. MOORE, J'R,
By DOANE & WHITE,
His Attorneys.

STATE OF OHIO, *High'and Co., ss:*

William W. Moore, j'r, being first duly sworn, upon his oath says, that the matters and allegations contained in the foregoing answer and reply are true in substance and fact as he verily believes.

WILLIAM W. MOORE, J'R.

Sworn to before me and subscribed in my presence this 11th day of Aug., 1873.

JA'S H. THOMPSON,
Register.

115 Afterwards, to wit, on the day and year last aforesaid, came the defendant, J. N. Henry, by A. F. Hixon, his att'y, filed in the office of the clerk of our said court his answer to the petition of said petitioners, in the words and figures following, to wit:

Answer of J. N. Henry.

District court of the United States, southern district of Ohio.

W'M M. MEEK, ASSIGNEE IN BANKPUPTCY OF Abram A. Moore,
vs.
CYRUS M. WALKER ET AL.

Answer of John N. Henry, one of the defendants herein, for answer to the petition of said petitioners, says:

That on the 8th day of March, 1872, he obtained a judgement against the said Abram A. Moore before C. C. Bowers, a justice of the peace in and for the township of Green, in the county of Clinton, Ohio, for the sum of one hundred and fifty-one and $\frac{91}{100}$ dollars, ($151.91,) and costs $2.05; and that on the 23d day of March, 1872, a transcript from the docket of said C. C. Bowers was filed with the clerk of the court
116 of common pleas of said Clinton County for execution; and that execution was issued and returned by the sheriff of said county unsatisfied, and that no part of said judgement has been paid.

(Reference: Transcript and certificate of said clerk, hereto attached, marked "Exhibit A.")

Wherefore he asks that he may be decreed to receive from the proceeds of any sale to be made herein the said sum of one hundred and fifty-one and $\frac{91}{100}$ dollars, the amount of his said judgement, with interest thereon from the 8th day of March, 1872, and that said judgement may be held to be a lien on the premises described in said petition as of and from the 8th day of March, 1872.

A. F. HIXON, *Att'y.*

THE STATE OF OHIO, *Highland Co., ss:*

John N. Henry, being first duly sworn, on his said oath says that the facts stated and allegations in his foregoing answer are true as he verily believes.

JOHN N. HENRY.

Sworn to be me and signed in my presence this 5th day of August, 1873.

JA'S H. THOMPSON, *Register.*

117 EXHIBIT A.

Before C. C. Bowers, J. P., of Green Tp, Clinton Co., O.

JOHN N. HENRY *vs.* ABRAM A. MOORE. } Civil action No. 147.

March 4th, 1872, the plaintiff filed his bill of particulars, which is in substance as follows: Being for cash paid by the said plaintiff on prom-

issory note made to R. T. Leverton by said defendant, A. A. Moore, on which promissory note the plaintiff was surety.

Note	$134 25
Interest	17 66
	151 91

March 4th, 1872, issued summons for appearance and trial returnable March 8th, 1872, at 10 o'clock a. m. Delivered the same to Jonathan Wright, const., March 8, 1872. The summons returned endorsed as follows: Received this writ March 4, 1872, and served the same on the same day by delivering a true copy with endorsements thereon to the within-named defendant.

Fees: Ser. & ret. 25 c.; copy 25 c.; mileage 35—85 c.

JONATHAN WRIGHT, *Const.*

March 8th, 1872, the plaintiff appeared. The defendant failed to
118 appear at the time specified in the summons, and for one hour thereafter. The plaintiff insisted on trial. The trial had. Whereupon it is considered by me from the evidence before me that the plaintiff recover of the said defendant the sum of one hundred and fifty-one and $\frac{91}{100}$ dollars and his costs herein taxed at $2.05.

J. P. Fees 1.20. Const. fees 85 c.

THE STATE OF OHIO, *Green Tp, Clinton Co., ss:*

I do hereby certify that the above is a full and true copy from my docket of the proceedings had by and before me at my office in said township, and I do further certify that nothing has been paid on said judgement.

C. C. BOWERS,
Justice of the Peace of the aforesaid Tp.

Transcript, 45; certificate, 25—70 c.; paid by pl'ff.

119 THE STATE OF OHIO, *Clinton Co., ss:*

I, L. D. Reed, clerk of the court of common pleas, within and for the county aforesaid, do hereby certify the foregoing to be a true copy of the transcript in the above case filed herein for execution on the 23d day of March, 1872. And I do further certify that an execution was duly issued upon the same, which execution was returned by the sheriff endorsed as follows:

Received the writ March 23, 1862, at 2 o'clock p. m., as commanded. I made diligent search, but find no goods or chattels, lands or tenements, on which to levy.

Dated this March 23, '72.

J. L. HACKNEY,
Sheriff C. Co., O.

Witness my hand and the seal of the court at Wilmington this 14th day of July, 1873.

[SEAL.] L. D. REED, *Clerk.*

In the district court of the United States for the southern district of Ohio.

120 IN THE MATTER OF ABRAM A. MOORE, bankrupt. } In bankruptcy.

SOUTHERN DISTRICT OF OHIO, *ss:*

At New Vienna, in the county of Clinton and State of Ohio, on the 17th day of December, A. D. 1872, before me came John N. Henry, of

New Vienna, in the county of Clinton and State of Ohio, and made oath and says that the said Abram A. Moore, the person for whom a petition for adjudication of bankruptcy has been filed, at and before the filing of said petition was, and still is, justly and truly indebted to this deponent in the sum of one hundred and fifty-one and $\frac{91}{100}$ dollars, as evidenced by the records of civil docket of C. C. Bowers, J. P., of Green Township, county aforesaid, wherein it will appear that judgement for the above amount against the said Abram A. Moore, for which said sum of $151.91, with interest, or any part thereof, this deponent says that he has not nor has any person by his order or to this deponent's knowledge or belief for his use had or received any manner of satisfaction or security whatever; and this deponent further says that
121 the said claim was not procured for the purpose of influencing the proceedings under the of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867; that no bargain or agreement, express or implied, has been made or entered into by or on behalf of this deponent, to sell, transfer, or take, or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent for assignee, or any action on the part of this deponent or any other person in the proceedings under said act has been, is, or shall be, in any way affected, influenced, or controlled.

JOHN N. HENRY.

Subscribed and sworn to before me on the day and year last aforesaid.

C. C. BOWERS, *J. P.*

Afterwards, to wit, on the day and year last aforesaid, the defendant, James Patton, by Henry A Shepherd, his solicitor, filed in the
122 office of the clerk of our said court here his answer to the petition of said petitioner, in the words and figures following, to wit:

Answer of James Patton.

District court of the United States for the southern district of Ohio.

WM M. MEEK, ASSIGNEE IN BANKRUPTCY OF Abram A. Moore, *vs.* C. M. WALKER ET AL.	Answer of James Patton.

James Patton, one of the defendants herein, for answer to the petition of said petitioner, says:

That at the November term of the court of common pleas of Clinton County, Ohio, began and holden on the twenty-fifth day of November, 1872, that is to say on the twenty-seventh day of November, 1872, in an action then therein pending, wherein he was plaintiff and said Abram A. Moore was defendant, he recovered a judgement against said Abram
A. Moore for the sum of four hundred and thirty five dollars,
123 with interest thereon from the date of such judgement at the rate of eight per cent. per annum.

That said judgement has not been paid nor any part thereof, and there is now due him thereon the sum of four hundred and thirty-five dollars, with eight per cent. interest from the said twenty-seventh day of November, 1872.

Wherefore he asks that he may be decreed to receive from the proceeds of any sale to be made herein the said sum of four hundred and thirty-five dollars, the amount of his said judgement, with eight per cent. interest thereon from the said twenty seventh day of November, 1872, and that said judgement may be held to be a lien on the premises described in said petition as of and from the said twenty-fifth day of November, 1872.

HENRY A. SHEPHERD,
Solicitor for James Patton.

STATE OF OHIO, *Highland Co., ss:*

James Patton, being first duly sworn, on his said oath says that
124 the facts stated and allegations in his foregoing answer are true, as he verily believes.

JAMES D. PATTON.

Sworn to before me and signed in my presence this 2nd day of August, 1873.

JAS. H. THOMPSON,
Register.

Pleas at Wilmington, within and for the county of Clinton and State of Ohio, begun and holden on the 25th day of November, in the year of our Lord one thousand eight hundred and seventy-two, before the Hon. Le Roy Pope, judge of the court of common pleas within and for the third subdivision of the second judicial district.

JAMES PATTON, PL'T'FF,
vs.
ABRAM A. MOORE, DEF'T.

Be it remembered that heretofore, to wit, on the 26th day of October, A. D. 1872, the plaintiff, by Henry A. Shepherd, his attorney,
125 filed in the office of the clerk of our said court here his petition in the words and figures following, to wit:

Court of common pleas, Clinton County, O.

JAMES PATTON, PLAINTIFF,
vs.
ABRAM A. MOORE, DEF'T. } Petition.

The plaintiff says that this action is founded upon a certain promissory note of which the following is a copy, and upon which there are no credits or endorsements, to wit:

"$415.20.—One day after date I promise to pay to the order of James Patton four hundred and fifteen dollars and twenty cents for value received this 20th day of April, 1872. Interest at eight per cent. from date.

"ABRAM A. MOORE."

[U. S. rev. stamp, 25 c'ts.]

There is due said plaintiff from said defendant on said promissory note the sum of four hundred and fifteen dollars and twenty cents, with eight per cent. interest thereon from the twentieth day of April, 1872.

126 Wherefore, said plaintiff asks a judgement against said defendant for said sum of four hundred and fifteen dollars and twenty cents, together with interest thereon at the rate of eight per cent. per annum from the 20th day of April, 1872.

HENRY A. SHEPHERD,
Att'y at Law.

STATE OF OHIO, *Highland County, ss:*

Henry A. Shepherd, being first duly sworn, on his said oath says that he is the attorney of the said James Patton, duly authorized in the premises, and that the foregoing petition of said James Patton is founded upon a written instrument for the payment of money only, which said instrument is now in his possession, and that the facts stated and all allegations in said petition are true, as he verily believes.

HENRY A. SHEPHERD.

Sworn to before me and signed in my presence this 25th day of October, 1872.

R. W. SPARGUR,
Clerk of Court of Common Pleas, Clinton County, Ohio.

127 *Precipe.*

JAMES PATTON, PL'TFF,
vs.
ABRAM A. MOORE, DEF'T.

To Clerk:

Issue summons upon the petition in the above case, returnable according to law.

Action for money only; amount claimed $415.20, with eight per cent. interest from April 20, 1872.

HENRY A. SHEPHERD,
Att'y for Pl'ff.

Thereupon was issued out of the office of the clerk of our said court here our writ of summons directed to the sheriff of Clinton Co., in the words and figures following, to wit:

THE STATE OF OHIO, *Clinton County, ss:*

To the sheriff of the county of Clinton:

You are commanded to notify Abram A. Moore that he has been sued by James Patton, plaintiff, in the court of common pleas of Clinton
128 County, and that unless he answer by the 23rd day of November, A. D. 1872, the petition of the said plaintiff against him, filed in the clerk's office of said court, such petition will be taken as true, and judgement rendered accordingly. You will make due return of this summons on the 4th day of November, A. D. 1872.

Witness my hand and the seal of said court at Wilmington, this 26th day of October, A. D. 1872.

[SEAL.]

L. D. REED,
Clerk.

Which writ was returned by the sheriff endorsed as follows:

Received this writ 26th day of Oct., 1872. As commanded by this

writ I summoned the within-named Abram A. Moore on the 31st day of October, 1872, by leaving a certified copy of this writ and endorsements at his usual place of residence. Dated this Oct. 31st, 1872.

Fees 2.00.

J. L. HACKNEY,
Sheriff C. Co., O.

Afterwards, in the term of November of our said court, to wit,
129 on the 27th day of November, A. D. 1872, before the Hon. Le Roy Pope, judge, comes the said plaintiff by H. A. Shepherd, his attorney, and the said defendant still failing to demur or answer unto said petition, it is considered that the plaintiff is entitled to an account of the money due him in the premises, and the court do find, with the assent of said plaintiff, that there is due him from the said defendant the sum of $415.20 as principle, and the further sum of $19.80, which the court finds due as interest thereon.

It is therefore considered by the court that the said plaintiff recover of the said defendant, Abram A. Moore, the sum of four hundred and thirty dollars, and also his costs herein expended, taxed at $; and it is further ordered that said judgement bear eight per cent. interest from this day.

THE STATE OF OHIO, *Clinton County, ss:*

I, L. D. Reed, clerk of the court of common pleas within and for the county aforesaid, do hereby certify the within and foregoing to be
130 a full, true, and correct transcript of the case of James Patton vs. Abram A. Moore.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the court at Wilmington, this the 18th day of Dec'r, 1872.

[SEAL.] L. D. REED, *Clerk.*

Afterwards, to wit, on the day and year last aforesaid, the defendant Silas Routh, by A. F. Hixon, his attorney, filed in the office of the clerk of our said court here his answer to the petition of said petitioner in the words and figures following, to wit:

Answer of Silas Routh.

District court of the United States for the southern district of Ohio.

WM M. MEEK, ASSIGNEE IN BANKRUPTCY of Abram A. Moore,
131 *vs.*
CYRUS M. WALKER ET AL. } Answer of Silas Routh.

Silas Routh, one of the defendants herein, for answer to the petition of said petitioner says that, on the 16th day of January, 1872, he obtained a judgement against said Abram A. Moore, before C. C. Bowers, a justice of the peace in and for the township of Green, in the county of Clinton, Ohio, for the sum of two hundred and seventy-six and $\frac{32}{100}$ dollars and two and $\frac{5}{100}$ dollars costs, and that on the 23 day of March, 1872, a transcript from the docket of said C. C. Bowers was filed in clerk's office of common pleas court of said Clinton County, (for execution,) and that on said 23rd of March, 1872, and execution was issued by said clerk, and was by him delivered to the sheriff of said Clinton County, and a levy was made on 49 acres of land described

and statements contained and set forth in the said answer of the said James D. Patton, denies and states as follows:

138 That the judgement referred to in said James D. Patton's answer, and as the same appears in and by the transcript of the record in said case attached to said answer, was rendered after the said Abram A. Moore was declared a bankrupt.

The said assignee avers and maintains that, by reason of the fact above stated, said James D. Patton's said judgement is of no effect or force as a lien upon said lands in the petition described as against said assignee.

The said assignee therefore prays that said judgement may be adjudged and decreed to be of no force and effect, and that the said James D. Patton has not, by reason thereof, any lien whatever upon said real estate as described in said petition or any part thereof.

WILLIAM M. MEEK,
Assignee of Abram A. Moore, Bankrupt,
By E. M. DEBRUIN & H. S. MEEK,
His Solicitors.

THE STATE OF OHIO, *Highland Co., ss:*

139 W'm M. Meek, assignee in bankruptcy of Abram A. Moore, being sworn, says that the statements in the foregoing reply he believes to be true.

W'M M. MEEK,
Assignee.

Sworn to before me and signed in my presence this 11th day of August, A. D. 1873.

J. H. THOMPSON,
Register.

Afterwards, to wit, on the day and year last aforesaid, came the defendant, Samuel J. Moore, by Sloane & Beeson, his solicitors, and filed the office of the clerk of our said court here his separate answer and reply to the answer of John Milner, j'r, in the words and figures following, to wit:

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, A BANKrupt, William M. Meek, assignee in bankruptcy of the said Abram A. Moore,
vs.
140 C. M. WALKER, H. A. SHEPHERD, T. H. Long, John Milner, j'r, Silas Routh, Samuel J. Moore, William W. Moore, j'r, William Moore, s'r, Thomas C. Moore, Joseph Cohn, J. N. Henry, Isaac Smith, Alexander Smith, J. W. Bell, Singer Manufactoring Company, Samuel Hixon, J. C. Santee, Glascock & Bro., D. C. Amberg, J. H. McMillen, W. P. Miller, P. A. Arthur, Patrick Collins, A. S. Amberg, Abram Conard, and A. B. Beard.

141 The separate answer and reply of Samuel J. Moore to the answer of John Milner, j'r, filed in this cause.

Samuel J. Moore, who is made a defendant as to the matters, things,

and statements contained and set forth in the said answer of the said John Milner, j'r, denies and states as follows:

Prior to and on the 17th day of November, 1870, the said Abram A. Moore was the legal owner in fee-simple, and was in possession of the said seven tracts of land first described in the bill in this cause, and mentioned in the answer of the said John Milner, j'r, but on the said 17th day of November, 1870, the said Moore and wife made and delivered to the said John Milner, j'r, a certain paper writing of that date, in the form of a deed of general warranty, whereby the said Moore and wife pretended and professed to convey to the said Milner in fee-simple the said seven tracts of land. But the said deed was made and delivered by the said Abram A. Moore with intent thereby to hinder, delay, and defraud the creditors of him, the said Abram A. Moore, (of whom the said Samuel J. Moore was one,) of their just and lawful debts,
142 claims, and damages against him the said Abram A. Moore, and to hinder and delay them, the said creditors, in the collection of the said debts, claims, and damages.

The said deed was moreover made upon no consideration whatever, no part of the consideration therein expressed having been ever paid, nor at the time of the making of the said deed being intended to be demanded or paid. The said Abram A. Moore at the time of the making and delivering of said deed was in failing circumstances, and was in fact insolvent, as the said Milner then well knew, and the said Milner procured the said deed to be made and delivered to him, and accepted the same, with intent to defraud and to assist and enable the said Abram A. Moore to defraud the said creditors of him, the said Moore, of their just and lawful debts, claims, and damages against him, the said Moore, and to hinder and delay them, the said creditors, in the collection of their said debts, claims, and damages, he the said Milner then well knowing the said Moore, in making and delivering the said deed to him, the said Milner, intended thereby to hinder, delay, and defraud as aforesaid the said creditors. Wherefore the said
143 Samuel J. Moore says and maintains that the said deed as against the creditors of the said Moore was and is utterly void and of no effect, and was, as against the said creditors, wholly inefficient to pass the title out of the said Moore. The said Moore made nor attempted to make any other conveyance of the said lands, nor of any of them excepting the mortgage hereinafter mentioned, at any time before the recovery of the judgement hereinafter mentioned. And this defendant further avers and maintains that, because of the facts hereinbefore stated, the said deed is utterly void and of no effect as against this defendant, and as against the said assignee, William M. Meek.

This defendant, further answering and replying to the statements and allegations of the said answer of the said Milner, denies that there is anything legally due to the said Milner upon the said promissory note for (nominally) $8,295\frac{52}{100}$, dated January 19th, 1872, mentioned in the said answer of the said Milner.

The said Milner received and procured the said hereinbefore-
144 mentioned deed from the said Moore and wife, as hereinbefore stated, and on the 19th and 20th days of January, 1872, had no title nor claim or pretense of title to the said seven tracts of land, than such as the said deed gave him or authorized him to make. On the said 19th day of January, 1872, the said Milner and wife executed to the said Abram A. Moore, for the pretended consideration of sixteen thousand dollars, a quit-claim deed, in due form of law, for the said seven tracts of land. But no part of the consideration therein expressed was

paid by the said Moore, nor intended nor demanded to be paid; and the said sum of $8,295\frac{89}{100}$ was not, and is not, nor was or is any part of it due from the said Moore to the said Milner for purchase-money for said premises; but the said promissory note for that sum is wholly without any consideration whatever, and is for that reason wholly void.

The said pretended promissory note and the said mortgage in the said answer of the said Milner, in so far as the same purports to have been given for the security of the sum of money expressed in the
145 said promissory note, were made, executed, and delivered with intent on the part as well of the said Milner as of the said Moore to defraud the said creditors of the said Moore of their just and lawful debts, claims, and damages, and to hinder, delay, and defraud them in the collection of the same; wherefore both the said note and the said mortgage as against this defendant and the said other creditors of the said Moore, and also as against the said assignee, are wholly void and of no effect, and the said mortgage constitutes no lien whatever upon any of the real estate described therein; and by reason of the facts hereinbefore stated, the said Milner has no vendor's lien upon the said seven tracts of land, nor upon any of them, for the payment of the sum of money mentioned in the said promissory note.

As to the statements of the said answer of the said John Milner, j'r, that he, the said John Milner, j'r, was surety for the said Moore to one Joseph C. Worthington in a note due January 1st, 1871, which was secured in the said mortgage by a discription of the debt, and that the said mortgage was also given to indemnify said surety, and that
146 the said Milner has paid said debt, viz, $155.00, March 20th, 1872, and $1,383.93, May 19th, 1873, and that said sums are yet due and unpaid to the said Milner, this defendant, Samuel J. Moore, does not know and has not the means of ascertaining whether they are true or not, and therefore does not admit their truth, nor the truth of either *of either* of them, but demands that the said statements and each of them be proved upon the hearing of this cause.

As to the statements contained in the subjoined paragraph of the said answer of the said John Milner, j'r, this defendant, Samuel J. Moore, does not know, and has not the means of ascertaining, whether they are true or not; therefore does not admit their truth nor the truth of either of them, but demands the said statements and each of them be proved upon the hearing of this cause:

"Defendant was and is also surety for said A. A. Moore to John B. Moore upon a note for $270.00, dated about September 7, 1871, bearing eight per cent. interest from date, which is also mentioned in said mortgage, and the same was also given to indemnify said defendant."

147 This defendant, further answering and replying, denies that the said John Milner, j'r, was the bona-fide purchaser of said seven tracts of land, or either of them, but avers that the said pretended purchase was from the said Abram A. Moore, and was made under the circumstances hereinbefore stated, and was fraudulent as hereinbefore stated, and by reason of the facts hereinbefore stated.

This defendant denies furthermore that the price fixed on said land in said fraudulent purchase was all it was reasonably worth.

On the 12th day of November, A. D. 1870, the said Abram A. Moore and this defendant made and delivered their joint and several promissory note to John Savage for the sum of four hundred and fifty-nine dollars and eighty cents, payable to the order of the said John Savage on or before the first day of January, 1872. The said note was given for a legal and sufficient consideration, all of which was received by

the said Abram A. Moore, and this defendant signed the said note solely for the accommodation of the said Moore and as his surety.

148 On the 26th day of February, A. D. 1872, the said note being then overdue and unpaid, the said Savage commenced suit upon the same against the said Abram A. Moore and this defendant in the court of common pleas of Clinton county, Ohio, and afterwards such proceedings were had in said action that on the first day of April, A. D. , the plaintiff, by the consideration of said court, recovered a judgement against the said Abram A. Moore as principal and this defendant as surety for the sum of four hundred and sixty dollars and sixty-nine cents, the amount, with interest, due upon the said note, and also costs of suit taxed at ten dollars and thirty-five cents, together the sum of $477.04.

Afterwards this defendant was compelled to pay off and satisfy, and did pay off and satisfy, the said judgements, whereby this defendant became entitled to all the legal and lien rights and remedies to which the said John Savage, upon the rendition of the said judgment, was entitled to as against the said Abram A. Moore and his property.

On the 25th day of April, A. D. 1870, the said Abram A. Moore and this defendant made and delivered their joint and several promis-

149 sory note to Israel Ferrel for the sum of eleven hundred and eighty-nine dollars and ninety cents, payable to the order of Israel Ferrel on or before the 25th day of December, 1870. The said note was given for a legal and sufficient consideration, all of which was received by the said Abram A. Moore, and this defendant signed the said note solely for the accommodation of said Moore and as his surety.

On the 13th day of December, A. D. 1870, there was paid on said note by the payee thereof the sum of seven hundred and eleven dollars, and no more.

After the maturity of the note and on the 1st day of January, 1872, the said Israel Terrel transferred, by his endorsement thereon, the said note to J. N. Henry, and delivered said note to him.

On the first day of March, A. D. 1872, the said note being then overdue and unpaid, the said Henry commenced suit on the same, against the said Abram A. Moore and this defendant, in the court of common pleas of Clinton County, Ohio, and afterwards such proceedings were had in said action that, on the 1st day of April, A. D. 1872, the

150 plaintiff, by the consideration of said court, recovered a judgement against the said Abram A. Moore as principal and this defendant as surety, for the sum of five hundred and sixteen dollars and thirty cents, the amount with interest due upon said note, and also costs of suit, taxed at eleven dollars and forty-five cents, together the sum of $527.75.

Afterwards this defendant was compelled to pay off and satisfy and did pay off and satisfy the said judgement; whereby the defendant became entitled to all the legal and lien rights and remedies to which the said J. N. Henry, upon the rendition of the said judgement, was entitled to, as against the said Abram H. Moore and his property.

On the 28th day of October, A. D. 1870, the said Abram A. Moore and this defendant made and delivered their joint and several promissory note to John F. Leverton for the sum of thirteen hundred and thirty-nine dollars and fifty cents, payable to John F. Leverton on or before the 25th day of December, 1871. The said note was given for a legal and sufficient consideration, all of which was received by the said

151 Abram A. Moore, and this defendant signed the note solely for the accommodation of the said Moore and as his surety. On the 21st day of March, 1872, the said note being then overdue and unpaid,

the said Leverton commenced a suit upon the same against the said Abram A. Moore and this defendant in the court of common pleas of Clinton County, Ohio. And afterwards such proceedings were had, that on the 1st day of June, A. D. 1872, the plaintiff, the consideration of said court, recovered a judgement against the said Abram A. Moore as principal, and this defendant certified as surety, for the sum of thirteen hundred and seventy-eight dollars and eleven cents, the amount with interest due upon the said note, and also costs of suit, taxed at $22.99, together the sum of $1,403.10.

Afterwards this defendant was compelled to pay off and satisfy, and did pay off and satisfy, the said judgements, whereby the defendant became entitled to all the legal and lien rights and remedies to which the said John F. Leverton, upon the rendition of said judgement, was
152 entitled to, as against the said Abram A. Moore and his property.

And this defendant claims and maintains that he has a valid lien upon the said seven tracts of land, for the amount of the said three judgements so paid off by him; and that the pretended mortgaged lien of the said Milner set up in his said answer, on the facts herein stated and for reasons herein given, is wholly invalid and of no effect.

This defendant avers that the said John Milner, j'r, previous to the election for assignee in bankruptcy for the said Abram A Moore, presented and proved the whole of said claim for eight thousand two hundred and ninety-five dollars and eighty-nine cents mentioned in his said answer, and for which in said answer he claims the said mortgage from the said Abram A. Moore and wife to him as a security; and at the said election for assignee votes the whole of the said sum. Therefore the defendant says that the said John Milner, j'r, did thereby surrender any security and lien by reason of said mortgage which he might otherwise have had (if any) for the payment of the said sum of money
153 or any part thereof.

This defendant prays that the said mortgage from the said Moore and wife to the said John Milner, j'r, may be adjudged and decreed to be void and of no effect, and that the said Milner has not, by reason of the same, nor otherwise, any lien whatever upon the said seven tracts of land, in the bill in this cause described, nor upon either of them.

SAMUEL J. MOORE,
By SLOANE & BEESON, *his Solicitors.*

THE STATE OF OHIO,
Highland County, ss:

Samuel J. Moore, the defendant named in the foregoing answer and reply, being duly sworn, upon his said oath says that he believes the statements of the said answer and reply to be true, and the matters and things denied by the said answer and reply to be untrue.

Sworn to before me and signed in my presence by the above-named Samuel J. Moore this 5th day of August, 1873.

JAS. H. THOMPSON, *Register.*

154 Afterwards, to wit, on the day and year last aforesaid, came the defendant, Cyrus M. Walker, by W. B. Telfair, his attorney, filed in the office of the clerk of our said court his exceptions to the register's report, in the words and figures following, to wit:

In the district court of the United States for the southern district of Ohio.

IN RE WILLIAM M. MEEK, ASSIGNEE OF A. A. Moore, bankrupt, of Clinton County, Ohio,
vs.
C. M. WALKER AND OTHERS, CREDITORS OF said bankrupt.

Exceptions to report of register.

And now comes Cyrus M. Walker and excepts to the report of the register herein filed, and states his exception as follows:

1st. To the ruling and holding of said register, that the said A. A. Moore, bankrupt, had no right or interest in law or equity to
155 the said premises upon which said attachment could be levied, because of his previous conveyance of the same to John Milner, j'r.

2nd. To the ruling of said in taxing the costs of a jury in hearing and determining said matter to the estate of said bankrupt.

CYRUS M. WALKER,
By W. B. TELFAIR,
His Attorney.

And afterwards, on the day and year last aforesaid, came the said John Milner, j'r, by his said solicitors, and filed in the clerk's office of the court aforesaid his certain demur'er to the evidence in this cause, clothed in the words and figures following, to wit:

Demurrer of John Milner, j'r, to evidence produced by assignee.

In the district court of the United States for the southern district of Ohio.

WM M. MEEK, ASSIGNEE IN BANKRUPTCY OF Abram A. Moore,
vs.
CYRUS M. WALKER ET ALS.

156 The demurrer of John Milner, j'r, to the evidence produced by the assignee.

The evidence for the assignee being concluded, the counsel for John Milner, j'r, demurs to the whole evidence, as not sustaining the allegations of the assignee made in his pleadings, and asks the said register to withdraw the case from the jury, and find for the defendant, John Milner, j'r, that the evidence does not sustain the allegations made by said assignee, and that there is no proof that the deed or mortgage from Moore to Milner were either of them fraudulent and without consideration; and counsel for John Milner, j'r, ask the register to declare the law to be, that where fraud is alleged the fraud must be proven by two witnesses or by one witness and corroborating circumstances, and that John Milner, j'r, having sworn in his answer and reply on file that all the transactions, including both deed and mortgage between him and Abram A. Moore, were bona fide, and having set forth the consideration, was not bound, under the 39th rule of equity practice in
157 the United States courts, to make any further answer or discov-

ery of title, and that it was incumbent on the assignee to show the facts in the said answer and reply to be untrue, which he has not done.

And the said John Milner, j'r, further asks the register to declare as the law that the answer and reply of said John Milner, j'r, sworn to, are sufficient to establish that the consideration of both said deed and mortgage were valid, and that the declarations of Abram A. Moore, either before or after either the deed or mortgage, and not in the presence of John Milner, j'r, do not bind John Milner, j'r, and are not evidenced to impeach the deed or mortgage or either of them. And there being no evidence showing that Milner did not originally and in good faith buy the land, as he has sworn in his answer and reply, and there being no evidence showing that the consideration of the mortgage from Moore to Milner was other or different from what the said John Milner, j'r, has sworn to in his answer and reply, and the said deed being more than two years prior to the adjudication in bankruptcy, and the said mortgage ten months prior to the adjudication in bankruptcy;
158 there is no case made out under the bankrupt act.

The counsel for the said John Milner, j'r, for these reasons, ask the said register to withdraw the said case from the jury, to declare the law to be as above set forth, and to certify the same to the district court, reserving to said John Milner, j'r, all rights to all and each exception heretofore taken in this cause and reserving all questions made by him on his demurrers to the pleadings, all exceptions to evidence and all that is embodied in each paper filed by him in this cause.

JOHN MILNER, J'R,
By GEO. B. GARDNER, &
C. H. COLLINS,
His Attorneys.

The undersigned, counsel for John Milner, j'r, certify that the foregoing paper is filed in good faith, and they believe well founded in law, and upon which they desire the opinion of the district judge.

GEO. B. GARDNER,
C. H. COLLINS, *Att'ys.*

159 And afterwards, on the day and year last aforesaid, came the said complainant, by his solicitors, and filed in the clerk's office of the court aforesaid his amendment to the reply to the answer of John Milner, j'r, clothed in the words and figures following, to wit:

Amendment to reply of W'm M. Meek to answer of J. Milner, j'r.

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, bankrupt, W'm M. Meek, assignee in bankruptcy of the said Abram A. Moore,
vs.
C. M. WALKER ET AL.

And now comes said William M. Meek, assignee, and, by leave of the court first had and obtained, files the following amendment to his said reply to the cross-petition and answer of said John Milner, j'r, to wit: Insert immediately after and between the words "as follows" in the 9th line, and the word "prior" in the 11th line from the top of the 2nd

page of said reply, the following words, to wit: "That from in-
160 formation that has come fully to the knowledge of said assignee since the filing of his bill, he now says."

WM M. MEEK, *Assignee*,
By E. M. DE BRUIN & H. L. MEEK,
His Solicitors.

THE STATE OF OHIO,
Highland Co., ss:

William M. Meek, assignee in bankruptcy of Abram A. Moore, being duly sworn, upon his said oath says, that he believes the statements in the foregoing amendment to his reply to the answer and cross-petition of the said John Milner, j'r, to be true.

WM M. MEEK,
Assignee in Bankruptcy of Abram A. Moore.

Sworn to before me and signed in my presence this 11th day of August, A. D. 1873.

JAMES H. THOMPSON,
Register.

And afterwards, on the day and year last aforesaid, came the said complainant, by his solicitors, and filed in the clerk's office of the court aforesaid his certain reply to the answer of Thomas H. Long,
161 herein, clothed in the words and figures following, to wit:

Reply of Meek to answer of T. H. Long.

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, bankrupt, William M. Meek, assignee in bankruptcy of the said Abram A. Moore,
vs.
C. M. WALKER, H. A. SHEPPHERD, T. H. Long, John Milner, j'r, Silas Routh, Samuel J. Moore, William W. Moore, j'r, William Moore, s'r, Thomas C. Moore, Joseph Cohn, J. N. Henry, Isaac Smith, Alexander Smith, J. W. Bell, Singer Manufactoring Co., Samuel Hixon, J. C. Santee, James
162 D. Patton, Glascock & Bro., D. C. Amberg, J. H. McMillen, W. P. Miller, P. A. Arthur, Patrick Collins, A. S. Amberg, Abram Conard, and A. B. Beard.

The reply of the said William M. Meek, assignee of Abram A. Moore, to the separate answer of Thomas H. Long filed in this cause.

William M. Meek, assignee of Abram A. Moore, as to the matters, things, and statements contained and set forth in the said answer of the said Thomas H. Long, denies and states as follows:

That the return of the sheriff, as the same appears in the transcript of the record of said case, does not show that the property levied upon, by virtue of the attachment issued in said cause, was the property of the said Abram A. Moore.

163 That the transcript of the record attached to and made a part of the answer and reply in this case shows that the motion of said Abram A. Moore to dissolve the said attachment, made pending the suit before the State court and before judgement, for the reason that the affidavit was insufficient and that the facts stated therein were not true, was, on the motion of the said Thomas H. Long, by his attorneys, stricken from the files of the said court of common pleas of Clinton County, on the ground that said court since the said A. A. Moore had been adjudged a bankrupt by the district court of the United States, had no jurisdiction to dispose of the questions raised by said motion to dissolve, and thereby remitted all questions as to the validity of said attachment and any lien by virtue thereof to the adjudication of this court.

And said assignee further avers and maintains that because of the facts hereinbefore stated, the said attachment is utterly void and of no effect as against him, the said assignee.

164 The said assignee prays that the said attachment may be adjudged and decreed to be dissolved and void and of no effect, and that the said Thomas H. Long has not, by reason of the same, any lien whatever upon the said seven tracts of land, in the bill in this case described or upon either of them.

WILLIAM M. MEEK,
Assignee of Abram A. Moore, Bankrupt,
By E. M. DEBRUIN & H. L. MEEK,
His Solicitors.

STATE OF OHIO,
Highland Co., ss:

William W. Meek, assignee in bankruptcy of Abram A. Moore, being duly sworn, upon his said oath, says that he believes the statements of the foregoing reply to be true.

W'M M. MEEK,
Assignee in Bankruptcy of A. A. Moore.

Sworn to before me and signed in my presence by the above-named William M. Meek, assignee in bankruptcy of Abram A. Moore, this 6th day of August, A. D. 1873.

JAMES H. THOMPSON,
Register.

165 And afterwards, on the day and year last aforesaid, came the said Thomas H. Long, by his solicitors, and filed in the clerk's office of the court aforesaid his certain exceptions to the report of the register herein, clothed in the words and figures following, to wit:

In the district court of the United States for the southern district of Ohio.

W'M M. MEEK, ASSIGNEE OF A. A. MOORE in bankruptcy,
vs.
C. M. WALKER, ET AL.

Now comes Thomas H. Long, one of the defendants in the above cause, by his attorneys, and excepts to the report of the register, James H. Thompson, in ruling and holding that A. A. Moore had no right, title,

or interest, in law or equity, to the said premises upon which said attachments could be levied, because of his previous conveyance of the same to John Milner, j'r, and in refusing to allow the said Tho's H. Long a preference of lien, by reason of his attachment, and placing him
166 in the list of general creditors.

Wherefore he prays that his exception be heard and determined, and that he be adjudged to have a prior lien by reason of his said attachment.

THOMAS H. LONG,
By ULRIC SLOANE,
His Attorney.

Pleas at Wilmington within and for the county of Clinton and State of Ohio, began and holden on the 25th day of November, in the year of our Lord one thousand eight hundred and seventy-two, before the Hon. Le Roy Pope, judge of the court of common pleas within and for the third subdivision of the second judicial district.

T. H. LONG, PLAINTIFF,
vs.
A. A. MOORE, DEFENDANT.

Be it remembered that heretofore, to wit, on the 2nd day of January, A. D. 1871, the plaintiff, by Hildebrant and Sloane, his attorneys,
167 filed in the office of the clerk of our said court here his petition against the said defendant in the words and figures following, to wit:

Petition.

State of Ohio, Clinton County court of common pleas.

T. H. LONG, PLAINTIFF,
vs.
ABRAM A. MOORE, DEF'T.

The plaintiff, T. H. Long, complains of the defendant, Abram A Moore, and for cause of action, says:

CAUSE OF ACTION NO. 1.

On the 25th day of May, 1870, he sold to defendant one hundred head of hogs, to average two hundred and sixty-five pounds and upwards, gross weight, to be weighed at the Great Western Stock-Yards, Cincinnati, Ohio, at eight & $\frac{75}{100}$ dollars per hundred pounds gross, to be delivered in the last two days of December, 1870, at the option of said plaintiff, said hogs to be in good merchantable condition.

On the 22nd day of December, 1870, plaintiff delivered said hogs at the place designated in said contract, and had said hogs weighed at the Great Western Stock-Yards, Cincinnati, Ohio; said hogs weighed
30,650 pounds gross, yet said defendant refused and neglected to
168 receive said hogs and pay for the same, according to the terms of said contract; and plaintiff avers that he was compelled to sell said hogs for a much less sum than the contract price, viz, the sum of six dollars and thirty cents (6 30) per hundred pounds gross.

Whereby plaintiff says he has sustained damages in the sum of seven hundred and fifty dollars and ninety cents.

CAUSE OF ACTION NO. 2.

On the 25th day of May, 1870, the plaintiff sold to the defendant seventy-five head of good, merchantable, fat hogs, to weigh 300 lbs. and upwards; said hogs were known as the Abe Adams hogs, to be delivered at New Lexington Station, on the Marrietta Railroad, the last half of November, 1870, at $8.00 per hundred pounds gross.

The defendant, by agreement, waived the delivery of said hogs, and authorized the plaintiff to market the same at defendant' risk.

Plaintiff avers that he caused said hogs to be transported to
169 Cincinnati, Ohio, on the 25th day of November, 1870, and that he sold said hogs for the highest market-price said hogs could then bring, viz, the sum of $6.31 per hundred pounds gross. Plaintiff says he gave due notice of his proceedings in the premises to said defendant, and demanded of him payment of the damages sustained by him by reason of the failure of defendant to receive and pay for said hogs according to the contract aforesaid, but that defendant hath hitherto refused, and still refuses, to pay the same, whereby plaintiff has sustained damages in the sum of $474.04.

Wherefore plaintiff prays judgement against the said defendant for the sum of twelve hundred and twenty dollars and ninety-six cents, with interest on the several sums aforesaid from the respective dates of delivery aforesaid, and costs.

HILDEBRANT & SLOANE,
Att'ys for Plaintiff.

THE STATE OF OHIO,
Clinton County, ss:

T. H. Long, being duly sworn, says the matters and facts set
170 forth in the foregoing petition are true, as he verily believes.

T. H. LONG.

Subscribed in my presence and sworn to before me this 2nd day of January, 1871.

L. D. REID, *Clerk.*

Precipe.

State of Ohio, Clinton County, court of common pleas.

T. H. LONG, PLAINTIFF,
vs.
A. A. MOORE, DEF'T.

Clerk will please issue summons for the above-named defendant, Abram A. Moore, returnable as the law directs. Suit brought for the recovery of money only. Amount claimed in damages, $1,224.96, & interest.

HILDEBRANT & SLOANE,
Att'ys for Plaintiff.

I acknowledge myself security for cost in the above action.

C. M. WALKER.

Summons.

Thereupon was issued out of the office of the clerk of our said
171 court our writ of summons, directed to the sheriff of Clinton County, O., in the words and figures following, to wit:

THE STATE OF OHIO,
Clinton County, ss:

To the sheriff of said county, greeting:

You are commanded to notify Abram A. Moore that he has been sued by T. H. Long, plaintiff, in the court of common pleas of Clinton County, Ohio, and that unless he answers by the 4th day of February, A. D. 1871, the petition of the said plaintiff against him, filed in the office of the clerk of said court, such petition will be taken as true and judgement rendered accordingly.

You will make due return of this summons on the 16th day of January, A. D. 1871.

Witness my hand and seal of the court at Wilmington, this 2nd day of January, A. D. 1871.

[SEAL.] L. D. REID, *Clerk.*

172 Which was returned by the sheriff, endorsed as follows:

Sheriff's return.

Received this writ January 6th, A. D. 1871, at 4 o'clock p. m. As commanded by this writ, I did, on the 10th day January, A. D. 1871, serve the within-named Abram A. Moore personally, by delivering to him a certified copy of this writ and of the endorsements therein. Dated this 10th day of January, A. D. 1871.

Fees, 1.96.

J. L. HARKNEY, *Sheriff,*
By P. A. STAMATS, *Dep'y.*

Affidavit.

Afterwards, to wit, on the 6th day of January, A. D. 1871, the plaintiff, by Hildebrant and Sloane, his attorneys, filed in the office of the clerk of our said court here this affidavit and undertaking, in the words and figures following, to wit:

Clinton Co., court of common pleas.

T. H. LONG, PLAINTIFF,
vs.
ABRAM A. MOORE, DEF'T. } Civil action.

The plaintiff says he commenced a civil action against the
173 defendant, Abram A. Moore, on the 2nd day of January, A. D. 1871, in the above-named court, to recover from the said defendant the sum of twelve hundred and twenty-four and $\frac{96}{100}$ dollars, damages sustained by the plaintiff on a/c of the failure of the defendant to accept from and pay plaintiff for one hundred and seventy-five head of hogs, defendant purchased from the plaintiff, to be delivered as follows, viz, one hundred head to weigh 265 lbs., gross, to be weighed at the Great

Western Stock Yards, Cincinnati, Ohio, to be delivered last ten days of Dec., 1870, at option of said plaintiff.

Affiant further says, on the 22nd day of December, A. D. 1870, he delivered said 100 head of hogs at the place designated, and had the same weighed, weight being 30,650 lbs., gross, yet said defendant neglected and refused to receive the same and pay therefor, according to the terms of said contract. Plaintiff was compelled to sell same for $6.30 per hundred lbs., whereby plaintiff says he has sustained damages in the sum of seven hundred and fifty dollars and ninety cents.

Affiant further says that seventy-five head of hogs, known as
174 the Abe Adams hogs, to be delivered at New Lexington station, on the Marietta & Cincinnati Railroad, last half of November, 1870, at $8.00 per hundred lbs., gross weight. Defendant by agreement waived the delivery of said 75 head of hogs and authorized plaintiff to market same at defendant's risk. Plaintiff says that he caused the same to be shipped to Cincinnati, Ohio, on the 25th day of November, 1870, said place being best available market, and sold the same at $6.31 per hundred, the highest market price at the time, at which price said hogs made a loss to affiant of four hundred and seventy-four & $\frac{94}{100}$ dollars from the contract price of defendant.

Plaintiff says that he has sustained a damage of twelve hundred and twenty-four and $\frac{96}{100}$ dollars, by reason of the defendant's neglect and refusal to accept said 175 head of hogs and pay him therefor, as per his said contract said defendant bound himself to do; the said demand is just, and that the plaintiff believes he ought to recover that sum from the defendant; and affiant further says that the said defendant
175 has disposed of his with intent to defraud his creditors; and further he saith not.

T. H. LONG.

Sworn to by T. H. Long, before me, and by him subscribed in my presence this 5th day of January, A. D. 1871.

JOHN W. CARTER.
Justice of the Peace, Cin'ti T'p, Hamilton Co., Ohio.

Bond.

State of Ohio, Clinton Co., O., court of common pleas.

T. H. LONG, PLAINTIFF,
vs.
ABRAM A. MOORE, DEF'T.

We bind ourselves to the said defendant, Abram A. Moore, that the plaintiff, T. H. Long, shall pay the said defendant the damages, not exceeding twenty-four hundred and fifty dollars, which he may sustain by reason of the attachment in this case, if the order therefor be wrongfully obtained.

Jan'y 6, '71.

T. H. LONG,
J. N. HENRY.

This undertaking approved by me this 6th day of January, A. D. 1871.

176 L. D. REID, *Clerk.*

Thereupon was issued out of the office of the clerk of our said court our writ of order of attachment, directed to the sheriff of Clinton Co., O., in the words and figures following, to wit:

The State of Ohio, Clinton County, court of common pleas.

THOMAS H. LONG
vs.
ABRAM A. MOORE.

To the sheriff of the county of Clinton:

You are hereby commanded, without delay, to attach and safely keep the lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys, and effect' of the defendant Abram A. Moore, wheresoever they may be found in your bailiwick, not exempt by law from being applied to the payment of the claim of the plaintiff, T. H. Long, or so much thereof as will satisfy the claim of the plaintiff, T. H. Long, for twelve hundred and twenty-four and $\frac{26}{100}$, and fifty dollars, the probable costs of this action. You will make due return of this order on the 26th day of January, one thousand eight hundred and seventy-one.

Witness my hand and the seal of the court at Wilmington
177 this 6th day of January, A. D. 1871.

[SEAL.] L. D. REID, *Clerk.*

Inventory and appraisement.

Afterwards, to wit, on the 12th day of January, A. D. 1871, the sheriff of Clinton County, Ohio, caused to be filed in the office of the clerk of our said court here, his inventory and appraisement and undertaking for delivery of attached property, in the words and figures following, to wit:

We, James L. Hackney, sheriff of said Clinton County, Ohio, by P. A. Stumats, deputy, and G. F. Bowers and Allen Dennis, two freeholders of said county, the said G. F. Bowers and Allen Dennis being first duly sworn, do truly inventory and appraise the following property, attached as the property of Abram A. Moore, on an order of attachment issued in the suit of the said T. H. Long against the said Abram A. Moore, now pending in the court of common pleas for the said county of Clinton and State of Ohio.

178 First tract or parcel of land bounded and described as follows:

Being part of W'm Moore survey, No. 2970, and beginning at a stone where a hickory bears S. 12° E. 13½ links, the black oak gone; S. corner to Hugh Evans' land and in a county road; thence along a county road with Evans' line N. 43° E. 79.92 poles to a stone; thence S. 44° 10′ E. 211$\frac{9}{100}$ poles to a stake in the N. W. line of Bernard's survey, No. 707, 7¾ poles S. W. of the N. corner of said survey; thence with said line S. 44¼°, W. 79.92 poles, to a stone where an ash bears S. 52° E. 18 links S. corner of the original survey; thence N. 44° W. 210 poles to the beginning, containing one hundred and five and three-eighths acres, be the same more or less, excepting and reserving a lot containing about one acre at the S. corner of the tract, which said lot heretofore deed' to George Barnes at seventy-five dollars per acre.

Also, another tract or parcel of land situate in the same survey, bounded and described as follows:

Beginning at a stake in W'm Henry's E. corner to said Abram Moore's

105-acre tract of land; thence with said line of said land N. 44° W.
179 212½ poles to the north corner of said tract, in the center of the New Vienna and Centreville road and in the line of R. R. Findley's land; thence with said road and line N. 43° E. $37\frac{1}{10}$ poles to a stake, corner to a 76¼-acre tract of land deeded by William Moore and Susannah Moore, his wife, to Thomas C. Moore, where a stone, another corner to said tract and corner to R. P. Findley's tract, bears N. 43° E. 25¼ links; thence with the line of Thomas C. Moore's tract S. 44° E. 214½ poles to a stake, corner to a 76¼-acre tract deeded by said William Moore and Susannah, his wife, to A. Moore, where a maple, 12 inches in diameter, bears S. 6° W. 39 links; thence with the line of said tract S. 44¾° W. $37\frac{1}{10}$ poles to the beginning, containing forty-nine acres and two roods of land, more or less, at seventy dollars per acre.

Also, another tract or parcel of land situate in the same county and State, and bounded and described as follows:

Beginning at a stone in the middle of the road leading from Wilmington to New Lexington; thence with said road S. 85° E. 76¼ poles
180 to a stake in the N. E. line of the original survey; thence with Moore's survey N. 42° 30′ W. $54\frac{7}{10}$ poles to a stone or stake in said line of said survey; thence S. 45° E. $52\frac{2}{10}$ poles to the beginning, containing eight and three-quarter acres of land, be the same more or less, being part of Benjamin Templar's survey No. 994, at seventy-five dollars per acre.

Also, another tract or parcel of land, being part of Benjamin Templar's survey, No. 994, and bounded and described as follows:

Beginning at a box-elder and ash in the N.W. line of Templar's survey, N. corner to George Hoskins, s'r, land; thence S. 45° W. $118\frac{56}{100}$ poles to a stake; thence N. 45° W. $84\frac{28}{100}$ poles to a stake in the centre of the road; thence N. 45° E. $118\frac{56}{100}$ poles to a stone corner of W'm Hoskins' land; thence S. 45° E. 84½ poles to the beginning, containing sixty-two acres, three rood', and twenty-two perches of land, at eighty dollars per acre.

Also, another tract or parcel of land, situate in and being part of Benjamin Templar's survey, No. 994, bounded and described as follows:

Beginning at a stone in the centre of the Wilmington road, cor-
181 ner of J. N. Henry's land; thence with said road S. 1° 7′ E. 45.76 poles to a stone in the centre of said road, S. 71° E. 20.41 rods to a stone, corner to A. Moore's line; thence with his line N. 47° E. 49 rods to another corner of A. Moore's land; thence with his line S. 46° W. 76 rods to the place of beginning, containing 23 acres 3 roods and 15 perches of land, be the same more or less, at seventy dollars per acre.

Also, another tract or parcel of land, bounded and described as follows: Beginning at a stone in the Wilmington road and corner of A. Moore's land; thence with his line S. 43° E. 41½ rods to a stake or stone in the line of John Powell's land; thence with his line N. 47° E. 101.80 rods to a stake or stone in the line of John Powell's land; thence with his line N. 47° E. 101.80 rods to a stake or stone in the Wilmington road; thence with said road N. 67° W. 45.76 rods to the beginning, containing 24 acres 2½ perches of land, be the same more or less, at seventy dollars per acre.

Also, another tract of land in the same survey, bounded and
182 described as follows: Beginning at a stone in the line of Bernard's survey, No. 707, on the north side of the county road leading from Wilmington to New Vienna; thence with the line of said road N. 85° W. 9¼ poles to a stone in the patent line of the original survey, No. 2970;

thence with said line 45° W. 11 15/100 poles to two hickories and sugar trees in said line; thence S. 83° E. 23½ poles to a stone in the patent line of said Bernard's survey, No. 707; thence with the survey S. 44° W. 8½ poles to the beginning, containing one acre of land, more or less, at seventy dollars per acre.

Also, the following described goods and chattels:

One spring colt, at	$30 00
One bay mare, six years old, at	125 00
One black mare, @	30 00
One " " , about 12 y'rs old, @	50 00
One " yearling colt, @	50 00
One iron-grey colt, 2 y'rs old, @	70 00
One roan horse colt, 2 y'rs, @	75 00
One sorrel colt, 1 y'r, @	60 00
One bay mare colt, 2 y'rs, @	80 00
One brown mare, 14 y'rs, @	30 00
One two-year-old bull, @	25 00
Two yearling heifers, @	50 00
183 One milch cow, @	50 00
One old cow, @	30 00
One cow and calf, @	55 00
One old red & white cow, @	35 00
Twenty-six shoats, @	80 00
Six brood-sows, @	100 00
One road-wagon, @	30 00
One cutting-box, @	8 00
One hay-fork and rope, @	12 00
One carriage & harness, @	50 00

Given under our hands and seals this 10th day of January, A. D. 1871.

J. L. HACKNEY,
Sheriff of Clinton Co., O.,
By P. A. STUMATS.
ALLEN DENNIS.
G. F. BOWER.

Bond.

Undertaking for the delivery of property.

Whereas J. L. Hackney, sheriff of the county of Clinton, and State of Ohio, has this day attached the following goods and chattels found in the possession of Abram A. Moore, on an order of attachment issued from the court of common pleas for said county of Clinton, in an
184 action wherein the said T. H. Long is plaintiff and Abram A. Moore is defendant, as the property of the said Abram A. Moore, and has caused the same to be valued at the sum of eleven hundred and twenty-five dollars; and whereas the said sheriff has delivered the said property to the said Abram A. Moore: Now we, Abram A. Moore and Samuel Moore, do acknowledge ourselves to be bound to the said T. H. Long, plaintiff, in the sum of $1,125, that the goods and chattels so attached, to wit:

One spring colt, @	$30 00
One bay mare, 6 years, @	125 00
One black mare, 6 years, @	30 00
One black " @	50 00

One black yearling, @		50 00
One iron-grey, 2 years, @		70 00
One roan colt, 2 years, @		75 00
One bay mare colt, 2 years, @		80 00
One sorrel colt, one year old, @		60 00
One brown mare, 14 years, @		30 00
One two-year-old bull, @		25 00
Two yearling heifers, @		50 00
One old cow, @		30 00
One white cow & calf, @		55 00
One old red and spotted *calf*, @		35 00
26 shoats, @		80 00
Six brood sows, @		100 00
185 One cutting-box, @		8 00
One hay-fork & rope, @		12 00
One carriage & harness		50 00

valued at the sum of $1,125.00, shall be forthcoming to answer the judgement of the court on the said action, or in default thereof that we shall pay to the said T. H. Long the said sum of $1,125.00, the appraised value of said goods and chattels.

Given under our hands and seals this 10th day of January, A. D. 1871.

A. A. MOORE. [SEAL.]
SAMUEL J. MOORE. [SEAL.]

Signed in my presence and approved by me this 10th day of January, A. D. 1871.

J. L. HACKNEY,
Sheriff.

Return of order of attachment.

Afterwards, to wit, on the 21st day of January, A. D. 1871, the sherift returned and filed in the office of the clerk of our said court here the order of attachment heretofore issued in this case, endorsed as follows:

Sheriff's return on order of attachment.

"Received this writ January 6th, 1871, at 4 o'clock p. m. Ac-
186 cording to the command*ed* of the within order of attachment, I did, on the 10th day of January, A. D. 1871, attach*ed*, in the presence of G. F. Bower and Allen Dennis, two freeholders of said county, the following lands and tenements, goods and chattels, to wit:

First, tract or parcel of land bounded and described as follows:

Being part of W'm Moore's survey, No. 2970, and beginning at a stone where a hickory bears S. 12° east 13½ links, black oak gone, south corner, to Hugh Evans' land, and in a county-road; thence along a county road with Evans' line N. 43° 79.92 poles to a stone; thence S. 44° 10′ E. 211 $\frac{8}{10}$ poles to a stone in the N. W. line of Bernard's survey, No. 707, 7¾ poles S. W. of the north corner of said survey; thence with said line S. 44¼ W. 79.92 poles to a stone where an ash bears N. 21° W. 6 links, and an ash bears S. 52 E. 18 links, S. corner of the original survey; thence 44° W. 210 poles to the beginning, containing one hundred and five and three-eighths acres of land, be the same more or less, excepting and reserving a lot containing about one acre
187 at the south corner of the tract, which lot was heretofore deed' Geo. Barnes.

Also, another tract or parcel of land situate in the same survey, bounded and described as follows: Beginning at a stake in W'm Henry's E. corner to said Abram A. Moore's 105-acre tract of land; thence with the line of said tract N. 44° W. 212½ poles to the north corner of said tract, in the centre of the New Vienna and Centreville road, and in the line of R. P. Findley's land; thence with said road and line N. 43° E. $37\frac{1}{10}$ poles to a stake, corner to a 76¼-acre tract, deeded by W'm Moore and Susannah, his wife, to Thomas C. Moore, where a stone, another corner to said tract, and corner to R. P. Findley's tract, bears N. 43° E. 25¼ poles; thence with the line of Thomas C. Moore's tract S. 44° E. 214½ poles to a stake, corner to a 76¼-acre tract deeded by said W'm Moore & Susannah, his wife, to Margery A. Moore, where a maple 12 inches in diameter bears S. 6° W. 39 links; thence with the line of said tract S. 44¾ W. $37\frac{1}{10}$ poles to the beginning, containing forty-nine acres and two roods of land, more or less.

188 Also, another tract or parcel of land situate in the said county and State, and bounded and described as follows: Beginning at a stone in the middle of the road leading from Wilmington to New Lexington; thence with said road S. 85° E. $76\frac{1}{10}$ poles to a stake in the N. E. line of the original survey; thence with Moore's survey N. 42° 30′ W. $54\frac{7}{10}$ poles to a stone or stake in said line of said survey; thence S. 45° E. $52\frac{2}{10}$ poles to the beginning, containing eight and three-quarters acres of land, be the same more or less, being part of survey No. 994, in the name of Benjamin Templar.

Also, another tract or parcel of land, being part of Benjamin Templar's survey, No. 994, and bounded and described as follows:

Beginning at a box elder and ash in the N. W. line of Templar's survey, N. corner of George Hoskins', jr, land; thence S. 45° W. $118\frac{56}{100}$ poles to a stake; thence N. 45° W. 84.28 poles to a stake in the centre of the road; thence N. 45° E. 118.56 poles to a stake, corner to Ora Hoskins' land; thence S. 45° E. 85½ poles to the beginning, containing sixty-two acres three roods and twenty perches of land.

189 Also, another tract or parcel of land situate and being a part of Benjamin Templar's survey, No. 994, bounded and described as follows:

Beginning at a stone in the centre of the Wilmington road, corner of J. N. Henry's land; thence with said road S. 1° 7′ east 45.76 poles to a stone in the centre of said road, corner to John Powell's land; thence with said road S. 71° E. 20.46 rods to a stone, corner of A. Moore's land; thence with his line N. 47° E. 49 rods to another corner of A. Moore's land; thence with his line S. 46° W. 76 rods to the place of beginning, containing 23 acres 3 roods and 15 perches of land, be the same more or less.

Also, another tract or parcel of land bounded and described as follows:

Beginning at a stone in the Wilmington road and corner of A. Moore's land; thence with his line S. 46° W. 82.88 rods to a stone in the line of John Hoskins' land; thence with his line N. 47° E. 101.80 rods to a stake or stone in the Wilmington road; thence with said road N. 67 W. 45.76 rods to the beginning, containing 24 acres and 2½ perches of land, more or less.

190 Also, another tract of land in the same survey, bounded and described as follows:

Beginning at a stone in the line of Bernard's survey, No. 707, on the north side of the county road leading from Wilmington to New Lexington; thence with the line of said road N. 85° W. 9¼ rods to a stone in

the patent line of the original survey No. 2970; thence with said line 45° W. 11.15 to two hickories and sugar-trees in the said line; thence S. 83° E. 23½ poles to a stone in the patent line of the said Bernard's survey, No. 707; thence with the same S. 44° W. 8½ poles to the beginning, containing one acre of land, more or less, heretofore attached on an order issued from this court in the case of C. M. Walker, plaintiff, against A. A. Moore, defendant, to which return ref/erence is had; and I did also, on the 10th day of January, A. D. 1871, attach*ed* the following goods and chattels in my hands under an order of attachment issued in the said action of the said C. M. Walker, plaintiff, against Abram A. Moore, defendant, and to the return of said case ref/erence is had; and I also attached on the same day, in the presence of the said G. F. Bower and Allen Dennis, the following-de-
191 scribed goods and chattels not attached in the aforesaid action of C. W. Walker against A. A. Moore, and in connection with the said G. F. Bower and Allen Dennis, two freeholders of said county, made inventory and valuation, which is herewith returned, to wit:

One brood-sow, one shoat, one cutting-box, one hay-fork and rope, one road-wagon, one red heifer, and one bull, and the said goods and chattels found in the possession of the said A. A. Moore delivered to the said A. A. Moore, taking his undertaking in the sum of $1,125.00, with Samuel J. Moore as his surety, for the forthcoming of the same, which undertaking, properly enclosed, is herewith returned; and I also delivered a certified copy of this writ to Abram A. Moore.

Given under my hand this 10th day of January, A. D. 1870.

J. L. HACKNEY, *Sh'ff*,
By P. A. STUMATS, *Dep'y*.

Fees: $14.20; appr. $6.00.

192 Afterwards, to wit, on the 4th day of February, A. D. 1871, the defendant, by Henry A. Shepherd, his attorney, filed in the office of the clerk of our said court here his demur'er to plaintiff's petition, in the words and figures following, to wit:

Demurrer.

Court of common pleas, Clinton Co., O.

T. H. LONG, PLAINTIFF, *vs.* ABRAM A. MOORE, DEF'T. } Demur'er to petition.

And the said defendant now comes and demurs to the first cause in the plaintiff's petition, for the reason following, to wit:

Because said first count of said petition does not state facts sufficient to constitute a cause of action.

HENRY A. SHEPHERD,
Att'y for Defendant.

Afterwards, in the term of February of our said court, to wit, on the 30th day of March, A. D. 1871, before the Hon'l' Le Roy Pope, judge, on motion, and by consent of parties, it is ordered that the demurrer to the petition of said plaintiff be, and the same is hereby, sus-
193 tained. On motion, leave is given said plaintiff to amend their petition by May 1st, 1871.

Afterwards, in the term of February *our* our said court, A. D. 1871, this cause was continued.

Afterwards, to wit, on the 27th day of April, A. D. 1871, the plaintiff, by Hildebrant and Sloane, his attorneys, filed in the office of the clerk of our said court here thejr amended petition, in the words and figures following, to wit:

State of Ohio, Clinton County, Ohio. Court of common pleas.

T. H. LONG, PL'FF,
vs.
A. A. MOORE, DEF'T.

Amended petition.

The plaintiff, for amended petition, by leave of court, says:

After the word "gross," at the end of the 9th line from the bottom of the first page, insert "of all of which the defendant had due notice."

194 2ND AMENDMENT.—After the word "gross," in the last line of the 1st page, insert "which was then and there the highest market-price for the same."

HILDEBRANT & SLOANE,
Att'ys for Plaintiff.

THE STATE OF OHIO,
Clinton County, ss:

T. Q. Hildebrant, being duly sworn, says he is one of the att'ys of record in this cause; that the plaintiff, T. H. Long, is a non-resident of Clinton County, and now absent therefrom, and that the matters set forth in the amended petition are true, as he verily believes.

T. Q. HILDEBRANT.

Subscribed in my presence and sworn to before me this 27th day of April, 1871.

L. D. REID, *Clerk.*

Afterwards, in the term of June of our said court, to wit, on the 26th day of June, A. D. 1871, before the Hon. Le Roy Pope, judge, on motion, leave is given defendant to file answer by August 15th, 1871.

195 Afterwards, in the term of June, A. D. 1871, of our said court, this cause was continued.

Afterwards, in the term of November of our said court, to wit, on the 6th day of December, A. D. 1871, before the hon. judge aforesaid, leave to defendant to file answer by February 15th, 1872.

Afterwards, in the term of November, A. D. 1871, of our said court, this cause was continued.

Afterwards, in the term of February of our said court, to wit, on the 1st day of March, A. D. 1872, before the hon. judge aforesaid, leave to defendant to file answer by March 15th, 1872.

Afterwards, in the term of February, A. D. 1872, of our said court, this cause was continued.

Afterwards, in the term of June, of our said court, to wit, on the 24th day of June, A. D. 1872, before the hon. judge aforesaid, absolute rule on defendant to file answer by September 1st, 1872.

196 Afterwards, in the term of June, A. D. 1872, this cause was continued.

Afterwards, to wit, on the 29th day of November, A. D. 1872, the defendant, by Quinby & Hayes, his attorneys, filed in the office of the clerk of our said court here his motion, in the words and figures following, to wit:

Motion.

Clinton Co. com. pleas.

T. H. LONG, PL'FF,
vs.
ABRAM A. MOORE, DEF'T.

Now comes the defendant and represents to the court herein that, upon his own petition, he has been adjudged a bankrupt, and therefore moves the court to stay proceedings in this cause till the question of his discharge in bankruptcy shall have been determined.

QUINBY & HAYES,
Att'ys for Defendant.

Afterwards, to wit, on the 13th day of December, A. D. 1872, the defendant, by Quinby and Hayes, his attorneys, filed in the office
197 of the clerk of our said court here his motion, which is in the words and figures following, to wit:

Motion.

State of Ohio, Clinton Co., court of com. pleas.

T. H. LONG, PLAINTIFF,
vs.
ABRAM A. MOORE, DEF'T.

Now comes the said defendant and moves the court to compel the plaintiff to give security for costs herein for the reason that the said plaintiff is a non-resident of the county of Clinton.

A. A. MOORE,
By QUINBY & HAYES,
His Attorneys.

Afterwards, to wit, on the 31st day of Dec., A. D. 1872, the defendant, by Quinby & Hayes, his attorneys, filed in the office of the clerk of our said court here their answer, in the words and figures following, to wit:

Answer.

In the court of com. pleas within and for Clinton Co., Ohio.

T. H. LONG, PLAINTIFF, *vs.* A. A. MOORE, DEF'T. } Answer.

198 Now comes the said defendant, and for answer to the petition of the said plaintiff saith, that the said plaintiff ought not to have his said action, because he saith that after the accruing of the several causes of action in plaintiff's petition stated, and before the commencement of this action, on or about the 6th day of December, A. D. 1870, the said plaintiff and defendant submitted themselves to the arbitration of and agreed to abide by and perform the award and determination of A. S. Amberg, Jonathan Wright, and Asa Higgins, chose' and selected by the mutual consent of the said plaintiff and defendant to award and determine of and concerning all and every cause of action then mutually existing and subsisting between the said plaintiff and defendant in regard to two certain contracts for the sale of hogs, seventy-five hogs to be by the plaintiff delivered to the defendant at New Lexington, O., and one hundred hogs to be by said plaintiff delivered to defendant at Cincinnati, Ohio, so that the arbitrators should make and publish their award and determination of and concerning the said premises on or before the twentieth of December, A. D. 1870,

199 took upon themselves the burden of awarding and determining in the premises; and the said arbitrators, upon the hearing of the said parties to said arbitrators, upon the premises aforesaid, found that:

Whereas difference' have arisen between Thomas H. Long and A. A. Moore in regard to two certain contracts for the sale of hogs, seventy-five head to be delivered at New Lexington, O., and one hundred head of hogs to be delivered at Cincinnati, O.; and whereas the parties have chosen the undersigned arbitrators to settle said difference: Now, therefore, we do award to the said Thomas H. Long the sum of six hundred and seventeen dollars, to be paid on or before the 25th day of December, 1871, and that the said A. A. Moore shall give to the said T. H. Long his promissory note with approved security for the payment of said money on or before the 20th day of Dec., 1870.

Given under our hands this 13th day of Dec., 1870.

A. S. AMBERG.
JONATHAN WRIGHT.
ASA HIGGINS.

200 And the said defendant saith that he was then and there ready and willing to perform all that he was by said award required to do, by making and delivering to said plaintiff his promissory note with good and sufficient surety, in accordance with said award, but that the plaintiff then and there refused to abide by the terms of said award.

QUINBY AND HAYES,
Att'ys for Defendant.

Abram A. Moore, being affirmed, saith that the several matters and things in the above and foregoing are true, as he verily believes.

ABRAM A. MOORE.

Affirmed to before me and subscribed in my presence this 31st day of Dec., A. D. 1870.

Clerk.

Afterwards, to wit, on the 31st day of Dec., A. D. 1872, the plaintiff, by Slone and Telfair, his attorneys, filed in the office of the clerk of our said court his demur'er in the words and figures following, to wit:

201 In the court of common pleas, Clinton County.

T. H. LONG, PLAINTIFF,
vs.
A. A. MOORE, DEF'T.

The plaintiff demurs to the answer of the defendant filed this 31st day of December, 1872, for the reason that the said answer does not state facts sufficient to constitute a defence to the plaintiff s petition.

By SLOANE & TELFAIR,
Att'ys for Plaintiff.

Afterwards, in the term of November of our said court, to wit, on the 31st day of December, A. D. 1872, before the Hon. Le Roy Pope, judge, leave to defendant to file answer. Same filed.

On motion of W'm M. Meek, by his counsel, and it appearing to the satisfaction of the court that the said Moore has been duly adjudged a bankrupt upon his own petition, and that said Meek has been duly appointed and approved as assignee for said bankrupt, leave is given to make the said W'm M. Meek a party defendant to and in this
202 action; whereupon the said Meek, by his counsel, enters his appearance to and in this action.

Motion.

Thereupon comes the said parties by their attorneys, and thereupon this cause came on for hearing upon the motion of plaintiff to strike motion to dissolve attachment filed by defendant in this case from the files, and was argued by counsel.

On consideration whereof the court do overrule said motion, upon the ground that the court has not, since the defendant, Abram A. Moore, has been adjudged a bankrupt in the U. S. district court, jurisdiction to dispose of the questions raised by said motion to discharge.

To which ruling of the court the said defendant, by his counsel, excepts.

Whereupon this cause came on further for hearing upon the demurrer of plaintiff to the answer of defendant, and was argued by counsel; on consideration whereof the court do sustain said demur'er.

Thereupon came a jury, to wit, Israel Terrel, Robert Wickersham, Jesse Kirk, Thomas Hazzard, James Wilson, G. W. Ovens, Cyrus
203 McDonald, D. M. Rudduck, Nathan Millikan, Charles Hughes, W'm Schofield, and J. B. Taylor, who were duly empannelled, sworn, and affirmed, truly to enquire and assess the plaintiff's damages in this action, who, upon their oaths and affirmations aforesaid, do return into court here their verdict in writing in the words and figures following, to wit:

We, the jury in the above-stated case, do find for the plaintiff, and assess his damages at $1,200.00.

ISRAEL TERREL, *Foreman.*

It is therefore considered by the court that the said plaintiff recover of the said defendant, Abram A. Moore, the said sum of twelve hundred dollars, his damages as aforesaid assessed, and his costs herein expended, taxed at $———.

THE STATE OF OHIO, *Clinton County, ss:*

I, L. D. Reid, clerk of the court of common pleas within and for the county aforesaid, do hereby certify that the within and foregoing
204 is a full, true, and correct transcript of the record *of the record* of the case wherein Thomas H. Long was plaintiff and Abram A. Moore was defendant.

Witness my hand and the seal of the court, at Wilmington, this 12th day of April, A. D. 1873.

[SEAL.] L. D. REID, *Clerk.*

Pl'ff's costs herein, 31.36.
Def't's " " 5.74.
Transcript, 13.45.

Pleas at Wilmington, within and for the county of Clinton and State of Ohio, begun and holden on the 26th day of February, in the year of our Lord one thousand eight hundred and seventy-two, before the Hon. Le Roy Pope, judge of the court of common pleas, within and for the third subdivision of the second judicial district.

J. N. HENRY, PLAINTIFF,
vs.
ABRAM A. MOORE, ET AL., DEF'TS.

205 Be it remembered that heretofore, to wit, on the 1st day of March, A. D. 1872, the plaintiff, by Hildebrant and Sloane, his attorneys, filed in the office of the clerk of our said court here his petition against the said defendant, in the words and figures following, to wit:

Petition.

State of Ohio, Clinton County, court of common pleas.

J. N. HENRY, PLAINTIFF,
vs.
ABRAM A. MOORE, SAMUEL J. MOORE, AND Israel Terrel, deft's. } Civil action. Petition.

The plaintiff, J. N. Henry, complains of the defendants, Abram A. Moore, Samuel J. Moore, & Israel Terrel, and for cause of action says: On the 25th day of April, 1870, the defendants, Abram A. Moore and Samuel J. Moore, executed their promissory note of that date, of which the following is a copy:

"APRIL 25*th*, 1870.

"On or before the 25th day of next December we, or either of us, promise to pay to Israel Terrel, or order, the sum of eleven hundred and eighty-nine and $\frac{20}{100}$ dollars, for value received.

"ABRAM A. MOORE.
"SAMUEL J. MOORE."

[65 cts. rev. stamp, cancelled.]

206 And delivered the said note to said Israel Terrel.

2d. On the 13th day of December, 1870, there was paid on said note, by the payee thereof, the sum of seven hundred and eleven dollars, and no more.

3. After the maturity of the note, and before the 1st day of January,

1872, the said Israel A. Terrell, for a valuable consideration, assigned and transferred, by his endorsement thereon, said note to the plaintiff, and delivered said note so indorsed to him.

4. At the date of said indorsement the said Terrell guaranteed to said plaintiff, by memorandum in writing then delivered to plaintiff, that there was due on said note the sum of $528.79 on said first day of January, 1872.

The defendants, Abram A. Moore and Samuel J. Moore, nor either of them, have paid said note, nor any part thereof, except as above stated, to the plaintiff, and there remains due and unpaid the sum of $478.96 thereon, with interest from the 25th day of December, 1870. The plaintiff prays judgement for $528.79 and interest.

HILDEBRANT & SLOANE,
Att'ys for Plaintiff.

207 THE STATE OF OHIO,
Clinton County, ss:

T. Q. Hildebrant, being sworn, says he is one of the firm of Hildebrant & Sloane, attorneys for the plaintiff; that this action is brought on a promissory note, a copy of which is set out in the petition; that the said note is now in his possession; that the statements set forth in the petition are true, as he verily believes.

T. Q. HILDEBRANT.

Subscribed in my presence and sworn to before me this 29th day of February, 1872.

L. D. REID, *Clerk.*

Præcipe.

J. N. HENRY, PLAINTIFF,
vs.
ABRAM A. MOORE, SAMUEL J. MOORE, AND Israel Terrell, def'ts.

Clerk will issue summons in the above-stated case for the said defendants, returnable according to law, endorsed for the recov-
208 ery of money only. Am't claimed, $528.79, with interest from Jan'y 1st, 1872.

HILDEBRANT & SLOANE.

Thereupon was issued out of the office of the clerk of our said court here our writ of summons, directed to the sheriff of Clinton County, O., in the words and figures following, to wit:

Summons.

THE STATE OF OHIO,
Clinton County, ss:

To the sheriff of the county of Clinton:

You are commanded to notify Abram A. Moore, Samuel J. Moore, and Israel Terrell that they have been sued by J. N. Henry, plaintiff, in the court of common pleas of Clinton, and that unless they answer by the 30th day of March, A. D. 1872, the petition of the said plaintiff against them filed in the clerk's office of said court, such petition will be taken as true and judgement rendered accordingly.

You will make due return of this summons on the 11th day of March, 1872.

Witness my hand and the seal of the court, at Wilmington,
209 this 1st day of March, 1872.

[SEAL] L. D. REID, *Clerk.*

Which writ was returned by the sheriff endorsed as follows:

Sheriff's return.

Received March 1st, 1872. I served Israel A. Terrell personally, by delivering to him a true copy of this writ and the endorsements thereon, and Abram A. Moore and Samuel J. Moore by leaving a true copy of this writ at their usual place of residence, with endorsements thereon, dated March 4, 1872.

Fees, $3.70.

J. L. HACKNEY, *Sheriff*,
By H. B. CRUMLY, *Dep'y.*

Afterwards, to wit, on the 28th day of March, A. D. 1872, the defendant, Samuel J. Moore, by W. B. Telfair, his attorney, filed in the office of the clerk our said court here his answer to the petition of plaintiff in the words and figures following, to wit:

Answer of Samuel J. Moore.

Court of common pleas, Clinton County, Ohio.

210 J. N. HENRY, PLAINTIFF,
vs.
ABRAM A. MOORE, SAMUEL J. MOORE, AND Israel A. Terrell.

The defendant, Samuel J. Moore, for separate answer to the petition of plaintiff, says:

1st. That he admits the signing and making of the said note in the petition set out, but says that he signed the same as surety only, receiving no part of the proceeds thereof. He says he is responsible as surety only for the amount of said note, subject to the payment thereon as stated in the petition, which is the sum of $478.90, with 6 % interest thereon from Dec. 25th, A. D. 1870, and no more, and for which judgement may be taken against him; but he asks that it may be certified that he is surety only.

W. B. TELFAIR.

THE STATE OF OHIO,
Clinton County, ss:

211 The defendant, Samuel J. Moore, in the above action, being first duly sworn, says that the facts stated in the foregoing answer are true, as he beleives.

SAMUEL J. MOORE.

Sworn to before me and signed in my presence this 25th day of March, 1872.

L. D. REID, *Clerk.*

Afterwards, in the term of February of our said court, to wit, on the 1st day of April, A. D. 1872, before the Hon. Le Roy Pope, judge, comes the said plaintiff, by Hildebrant & Sloane, his attorneys, and the said defendant, Samuel J., by W. B. Telfair, his att'y, who files his answer herein, consenting that judgement may be rendered against him as surety only. And the said defendants, Abram A. Moore and Israel A. Terrel, being in default for answer, it is considered that the plaintiff is entitled to an account of the money due him in the premises, and the court do find that there is due the plaintiffs from the said Abram A. Moore, as principal, and the said Samuel J. Moore, as surety, and the

said Israel A. Terrell, as endorser, the sum of $516.30, as evi-
212 denced by the note in the plaintiff's petition set forth.

It is therefore considered by the court that the said plaintiff recover of the said Abram A. Moore, as principal, and Samuel J. Moore, as surety, and Israel A. Terrel, as endorser, the said sum of five hundred and sixteen & $\frac{30}{100}$ dollars so as aforesaid found due, and also his costs herein expended, taxed to $.

THE STATE OF OHIO,
Clinton County ss:

I, L. D. Reid, clerk of the court of common pleas, within and for the county aforesaid, do hereby certify the foregoing to be a full, true, and correct transcript of the record in the case of J. N. Henry against A. A. Moore et al.

Witness my hand and the seal of the court, at Wilmington, this 14th day of July, 1873.

L. D. REID, *Clerk.*

Fee, 2.60. Costs herein taxed to $11.45, p'd by J. N. Henry.

213 Pleas at Wilmington, within and for the county of Clinton, and State of Ohio. Began and holden on the 25th day of November, in the year of our Lord one thousand eight hundred and seventy-two, before the Hon. Le Roy Pope, judge of the court of common pleas within and for the third subdivision of the second judicial district.

CYRUS M. WALKER, PLAINTIFF,
vs.
ABRAM A. MOORE, DEFENDANT.

Be it remembered that heretofore, to wit, on the 20th day of December, A. D. 1870, the plaintiff, by Doan, White, and Telfair, his attorneys, filed in the office of the clerk of our said court here his petition, affidavit, and bond, in the words and figures following, to wit:

Petition.

Court of com. pleas, Clinton Co., O.

CYRUS M. WALKER, PLAINTIFF,
vs.
ABRAM A. MOORE, DEF'T. } Petition.

That on the 23rd day of June, A. D. 1870, at the county of
214 Clinton aforesaid, the plaintiff and defendant entered into an agreement in writing in substance as follows:

The plaintiff agreed to sell to the defendant, and the defendant to purchase of him, five hundred head of merchantable fat hogs, to be delivered and weighed, at the option of the plaintiff, at either Wilmington, Clinton Station, Reesville, or Sabina; five hundred and fifty of said hogs to be delivered by the plaintiff to the defendant at his, the plaintiff's, option, at any time during the first fifteen days of the month of December, A. D. 1870, and the remaining two hundred and fifty head of said hogs to be delivered by the plaintiff to the defendant, at the plaintiff's option, at any time from the 15th to the 25th days of December, A. D. 1870; said hogs to weigh two hundred and seventy-five (275) pounds and upwards; and the defendant agreed to pay the plaintiff, on the

delivery, for said hogs eight dollars per hundred gross weight. A copy of said agreement is hereto attached. And the said plaintiff, in the exercise of the option given him by said agreement, selected Wilming-
215 ton, Clinton County, Ohio, as the place where he would deliver to the defendant all of the said 500 head of hogs, and designated the 6th day of December, A. D. 1870, as the time at which he would deliver said 250 head of hogs, to be delivered by said agreement during the first fifteen days of December, 1870, and further designated the 17th day of December, 1870, as the time which he would deliver to the defendant the said 250 head of hogs, to be delivered by said agreement from the 15th to the 25th days of December, 1870, and gave to the defendant notice of the place and times chosen by him for the delivery of said property, pursuant to said agreement. The plaintiff duly performed all the conditions of said contract on his part, and was on the said 6th day of December, 1870, and also on the said 17th day of December, 1870, at Wilmington, Clinton County, Ohio, ready and willing then and there to deliver the said property and tender the same to the defendant. But he refuses to accept and pay for it, pursuant to said agreement, either on 6th day of December, 1870, or on the said 17th
216 day of December, 1870, to the damage of the plaintiff $3,753.19, for which he asks judgement, with interest thereon from the 17th day of December, A. D. 1870.

DOAN & WHITE AND
W. B. TELFAIR,
Att'ys for plaintiff.

THE STATE OF OHIO,
Clinton County, ss:

Cyrus M. Walker, being plaintiff in the above-stated action, being first duly affirmed, says that the facts stated in and allegations of his foregoing petition are true, as he verily believes, and further he saith not.

C. M. WALKER.

Affirmed to before me and subscribed in my presence this 20th day of December, A. D. 1870.

G. P. DUNHAM,
Dep'y Clerk.

Copy of agreement.

Copy of agreement.

217 It is agreed between C. M. Walker, of Wilmington, Ohio, and Abram A. Moore, of Clinton County, Ohio, as follows:

Walker sells to Moore 500 head of merchantable fat hogs; to be delivered and weighed, at the option of said Walker, at either Wilmington, Clinton Station, Reesville, or Sabina, Ohio, as follows: 250 head the first fifteen days of December, 1870, and 250 head from the 15th to the 25th days of December, 1870. Walker's option, said hogs to weigh 275 lbs. and upwards, at eight ($8.00) dollars per hundred gross weight. In witness whereof we have hereunto set our hands this 23rd day of June, 1870.

C. M. WALKER.
ABRAM A. MOORE.

Witness—
H. T. DAVIS.
M. BETTS.

Precipe.

Court of com. pleas, Clinton Co., O.

CYRUS M. WALKER, PLAINTIFF,
vs.
ABRAM A. MOORE, DEFENDANT.

Issue summons upon the petition in the above cause, returnable according to law; amount claimed, $3,753.19.

DOAN & WHITE AND
W. B. TELFAIR,
Att'ys for pl'ff.

218 *Affidavit.*

THE STATE OF OHIO,
Clinton County, ss:

CYRUS M. WALKER, PLAINTIFF,
vs.
ABRAM A. MOORE, DEF'T. } Affidavit.

The said Cyrus M. Walker, plaintiff, being first duly sworn, deposeth and saith that he has commenced an action in said court against the said Abram A. Moore, defendant, to receive the sum of $3,753.19 now due and payable to the said plaintiff from the said defendant for damages sustained by the plaintiff by reason of the failure of the said defendant to comply with the stipulations of an agreement in writing, made and entered into by and between the plaintiff and the defendant on the 23d day of June, A. D. 1870, for the sale and delivery of the plaintiff to the defendant of 500 head of merchantable fat hogs; and the said Cyrus M. Walker further saith that the said claim is just, and that he believes that, by the reasons of the premises, he has sustained damages to the sum of $3,753.19, and that he justly ought to recover the
219 same; and that the said affiant further saith that the said Abram A. Moore has disposed of his property, or a part thereof, with the intent to defraud his creditors; and further this deponent saith not.

C. M. WALKER.

Signed in my presence and affirmed to before me this 26th day of December, A. D. 1870.

G. P. DUNHAM,
Dep'y Clk.

Bond.

The State of Ohio, Clinton Co., court of com. pleas.

CYRUS M. WALKER, PLAINTIFF,
vs.
ABRAM A. MOORE, DEF'T. } Bond.

We bind ourselves to the said defendant, Abram A. Moore, that the plaintiff, Cyrus M. Walker, shall pay the said defendant the damages, not exceeding seventy-five hundred and six & $\frac{37}{100}$ dollars, which he may sustain by reason of the attachment in this action if the order be wrongfully obtained.

Dec. 21, '70.

C. M. WALKER,
JEFF. HILDEBRANT, AND
220 C. N. OSBORN.

The undertaking proved by me this 20th day of December, A. D. 1870.

L. D. REID, *Clerk.*

Thereupon was issued out of the office of the clerk of our said court here our writs of summons and order of attachment, directed to the sheriff of Clinton County, O., in the words and figures following, to wit:

THE STATE OF OHIO,
Clinton County, ss:

To the sheriff of the county of Clinton:

You are commanded to notify Abram A. Moore that he has been sued by Cyrus M. Walker, plaintiff, in the court of common pleas of Clinton Co., and that, unless he answers by the 21st day of January, A. D. 1871, the petition of the said plaintiff against him filed in the office of the clerk aforesaid court, such petition will be taken as true and judgement rendered accordingly.

221 You will make due return of this summons on the 2nd day of January, A. D. 1871.

Witness my hand and the seal of the court at Wilmington this 20th day of Dec'r, A. D. 1870.

[SEAL.] L. D. REID, *Clerk.*

Which writ was returned by the sheriff endorsed as follows:

Received this writ Dec. 20th, A. D. 1870, at 5 o'clock p. m. As commanded by this writ, I served the said Abram A. Moore on the 21st day of December, 1870, personally, by delivering to him a certified copy of this writ and endorsements thereon.

Dated this 23rd day of December, 1870.

Fee, $1.95.

P. A. STAMATS,
Sh'r'ff C. Co., O.

Attachment.

THE STATE OF OHIO,
Clinton County, ss:

222 Court of common pleas of Clinton County, Ohio.

CYRUS M. WALKER
vs.
ABRAM A. MOORE.

To the sheriff of the county of Clinton:

You are commanded to attach and safely keep the lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys, and effects of the defendant not exempt from law from being applied to the payment of the claims of the plaintiff, Cyrus M. Walker, or so much thereof as will satisfy his claims for thirty-seven hundred and fifty-three and $\frac{12}{100}$ dollars, and fifty dollars, the probable cost of this action.

You will make due return of this order on the 2nd day of January, A. D. 1871.

Witness my hand and the seal of the court, at Wilmington, this 20th day of December, 1870.

L. D. REID, *Clerk.*

223 Which writ was returned by the sheriff endorsed as follows:

THE STATE OF OHIO,
Clinton County, ss:

Received this writ December 20th, A. D. 1870, at 5 o'clock p. m. According to the command of the within order, I did on the 21st day of December, A. D. 1870, at 2.30 o'clock p. m., in the presence of Thomas L. Rogers and Joel Brewer, two freeholders of the said county of Clinton, attach the following lands and tenements, goods and chattels, to wit:

One bay mare, five years old; one brown mare, twelve years old; one bay mare, six years old; one spring colt; one roan colt, two years old; one grey colt, two years old; one sorrel colt, one year old; one black colt, one year old; two milch cows, (old;) one cow and calf; one red heifer; one young sow; ten brood sows; twenty-five shoats; one buggy and harness.

224 And the following premises situate in the county of Clinton and State of Ohio: First, tract or parcel of land bounded and described as follows:

Being part of W'm Moore's survey No. 2970, and beginning at a stone where a hickory bears S. 12° E. 13½ links, the black oak gone S. corner to Hugh Evans' land, and in a county road; thence along a county road with Evans' line, N. 43° E. 79.92 poles, to a stone; thence south 40° 14′ E. 211 $\frac{2}{10}$ poles, to a stake in the N. W. line of Bernard's survey No. 707, 7¾ poles southwest of the north corner of said survey; thence with said line S. 44½° W. 79 $\frac{92}{100}$ poles, to a stone where an ash bears N. 21° W. 6 links, and an ash bears S. 52° E. 18 links, S. corner of the original survey; thence N. 44° W. 210 poles, to the beginning, containing one hundred and five acres three-eighths acres, be the same more or less, excepting and reserving a lot containing about one acre at the south corner of the tract, which said lot was heretofore deeded to George Barnes.

Also another tract of land in the same survey, bounded and described as follows:

225 Beginning at a stone in the line of Bernard's survey No. 707, on the north side of the county road leading from Wilmington to New Lexington; thence with the line of said road N. 85° W. 9¼ poles to a stone in the patent line of the original survey No. 2970; thence with the said line 45° W. 11.15 poles to two hickories and sugar tree in said line; thence S. 83° E. 23½ poles to a stone in the patent line of said Bernard's survey No. 707; thence with the same S. 44° W. 8½ poles to the beginning, containing one acre, be the same more or less.

Also another tract or parcel of land situate in the same survey and bounded and described as follows:

Beginning at a stake in M'r's Henry's east corner to said Abram Moore's 105-acre tract of land; thence with the line of said tract N. 44° W. 202½ poles to the N. corner of the said tract in the centre of the New Vienna and Centreville road, in the line of R. B. Findley's land; thence with the said road and line, N. 43° E. 37 $\frac{1}{10}$ poles, to a stake, corner to a 76½-acre tract deeded by William Moore and Susannah Moore, his
226 wife, to Thomas C. Moore, where a stone, another corner to said tract and survey to R. B. Findley's tract, bears N. 43° 25¼ links; thence with the line of Thomas C. Moore's tract S. 44° E. 214½ poles to a stake, corner to a 76½-acre tract, deeded by said William Moore and Susannah, his wife, to Margery A. Moore, where a maple 12 inches in diameter bears S. 60° W. 39 links; thence with the line of said tract S.

44¾ W. 37 1/10 poles, to the beginning, containing (49) forty-nine acres two roods of land, more or less.

Also another tract or parcel of land situate in the same county and State and bounded and described as follows:

Beginning at a stone in the middle of the road leading from Wilmington to New Vienna; thence with said road S. 85° E. 76 1/10 poles to a stone in the N. E. line of the original survey; thence with Moore's survey N. 42° 30′ W. 54 7/10 poles to a stone or stake in said line of said survey; thence S. 45° E. 52 1/10 poles to the beginning, containing eight and three-quarter acres of land, be the same more or less, being part of survey No. 994, in the name of Benjamin Templar.

227 Also another tract or parcel of land being part of Benjamin Templar's survey No. 994, and bounded and described as follows:

Beginning at a box-elder and an ash in the N. W. line of Templar's survey, N. corner of George Hoskins, Sr, land, and thence S. 45° W. 118.56 poles to a stake; thence N. 45° W. 84 28/100 poles to a stake, in the centre of the road; thence N. 45° W. 84 28/100 poles to the beginning, containing sixty-two acres three roods and twenty-two perches of land.

Also another tract or parcel of land situate and being part of Benjamin Templar's survey No. 994, bounded and described as follows:

Beginning at a stone in the centre of the Wilmington road corner to J. N. Henry's land; thence with said road S. 1° 7′ E. 45.76 poles to a stone in the centre of said road, corner to John Powell's land; thence with said road S. 71 E. 20.41 rods to a stone, corner of A. Moore's land; thence with his line N. 47° E. 49 rods to another corner of A. Moore's land; thence with his line N. 46° W. 61 rods to another corner of A. Moore's land; thence with his line S. 46° W. 76 rods to the place

228 of beginning, containing 23 acres 3 roods and 15 perches of land, be the same more or less.

Also another tract or parcel of land bounded and described as follows:

Beginning at a stone in the Wilmington road, corner of A. Moore's land; thence with his line S. 46 W. 82.88 rods to a stone in the line of John Hoskins' land; thence with his line S. 43° E. 41½ rods to a stake or stone in the line of John Powell's land; thence with his line N. 47° E. 101 50/100 rods to a stake or stone in the Wilmington road; thence with said road N. 67° W. 45 96/100 rods to the beginning, containing twenty-four acres and 2½ perches of land, more or less.

And in connection with the said Thomas L. Rogers and Joel Brewer having first sworn, the said Thomas L. Rogers and Joel Brewer made inventory and valuation thereof in writing, which is herewith returned, and I left with Abram A. Moore, the occupant of said real estate, a certified copy of this order, and the said goods and chattels found in the possession of the said Abram A. Moore.

I delivered to the said Abram A. Moore, taking his undertak-

229 ing in the sum of $1,060.00, with Samuel J. Moore as his surety for the forthcoming of the same, which undertaking, properly endorsed, is herewith returned.

Given under my hand and seal this 23rd day of December, A. D. 1870.

Fee, 12.68.

Appr., 6.00.

P. A. STAMATS,
Sheriff C. C., O

Bond for the delivery of property.

Court of common pleas, Clinton County, O.

CYRUS M. WALKER
vs.
ABRAM A. MOORE. } Bond for the delivery of attached property.

Whereas P. A. Stamats, sheriff of the county of Clinton, has this day attached the following goods and chattels found in the possession of Abram A. Moore, on an order of attachment issued from the court of common pleas for said county of Clinton, in an action wherein the said Cyrus M. Walker is plaintiff and Abram A. Moore is defendant, as the property of the said Abram A. Moore, and has caused the same to be
230 valued at the sum of ten hundred and sixty dollars; and whereas the said sheriff has delivered the said property to the said Abram A. Moore:

Now we, Abram A. Moore and Samuel J. Moore, do acknowledge ourselves to be bound to the said Cyrus M. Walker, plaintiff, in the sum of $1,060.00; that the goods and chattels so attached, to wit—one bay mare, five years old; one brown mare, 12 y'rs old; one black mare, 12 years old; one bay mare, 6 years old; one spring colt; one roan colt, two year' old; one grey colt, two years old; one sorrel colt, 2 years old; one black colt, 2 years old; one black colt, 2 years old; two old milch cows; one white cow and calf; one red heifer; one young milch cow; ten brood sows; twenty-five shoats; one buggy and harness—valued at the sum of one thousand and sixty (1,060.00) dollars—
231 shall be forthcoming to answer the judgement of the court in the said action, or in default thereof that we will pay to the said Cyrus M. Walker the said sum of ten hundred and sixty dollars, the appraisers' value of the said goods and chattels.

Given under our hands and seals this 21st day of Dec'r, 1870.

ABRAM A. MOORE.
SAMUEL MOORE.

Signed in my presence and approved by me this 21st day of Dec., 1870.

P. A. STAMATS,
Sheriff C. Co., O.

Inventory and appraisement.

Inventory and appraisement.

We, P. A. Stamats, sheriff of said county of Clinton, and Thomas L. Rogers and Joel Brewer, two freeholders of said county of Clinton, the said Thomas L. Rogers and Joel Brewer being first duly sworn, do truly inventory and appraise the following property of Abram A. Moore on an order of attachment issued in a suit of the said
232 Abram A. Moore, now pending in the court of common pleas for the said county of Clinton:

One brown mare, 12 y'rs old, at	$75 00
One bay mare, 5 years old, at	50 00
One black mare, 12 years old, at	80 00
One bay mare, 6 years old, at	125 00

One spring colt, @	30 00
One roan colt, 2 years old, at	75 00
One iron-grey colt, 2 years old, at	75 00
One iron-grey colt, 2 years old, at	55 00
One sorrel colt, 1 year old, at	50 00
One black colt, 1 year old, at	40 00
Two milch cows, (old,) at $35 each	70 00
One cow and calf, at	60 00
One red heifer, at	20 00
One young cow, @	45 00
Ten brood sows, at	100 00
Twenty-five shoats, at	50 00
One buggy and harness, at	60 00

Also the following premises, situate in the county of Clinton and State of Ohio:

First tract or parcel of land bounded and described as follows:

Being part of W'm Moore's survey No. 2970, and beginning at the stone where a hickory bears S. 12° E. 13½ links, the black oak
233 gone; S. corner to Hugh Evans' land and in a county road; thence along a county road with Evans' line N. 43° E. 79.92 poles to a stone; thence S. 44° 10′ E. 211$\frac{2}{10}$ poles to a stake in the N. W. line of Bernard's survey, No. 707, 7¾ poles southwest of the north corner of said survey; thence with said line S. 44¼° W. 79.92 poles to a stone where an ash bears N. 21° W. 6 links, and an ash S. 52° E. 18 links, S. corner of the original survey; thence N. 44° W. 210 poles to the beginning, containing one hundred and five and three-eighths acres of land, be the same more or less, excepting and reserving a lot containing about one acre at the S. corner of the tract, which said lot was heretofore deeded to George Barnes at ($70.00) seventy dollars per acre.

Also another tract of land in the same survey, bounded and described as follows:

Beginning at a stone in the line of Bernard's survey, No. 707, on the north side of the county road leading from Wilmington to New Lex-
ington; thence with the line of said road N. 85° W. 9¼ poles to a
234 stone in the patent line of the original survey, No. 2970; thence with said line 45° W. 11.15 poles to two hickory trees and sugar tree in the said line; thence S. 83° E. 23½ poles to a stone in the patent line of said Bernard's survey, No. 707; thence with the same S. 44° W. 8¼ poles to the beginning, containing one acre of land, be the same more or less, at seventy dollars per acre.

Also another tract or parcel of land situate in the same survey, and bounded and described as follows:

Beginning at a stake in M'r's Henry's east corner to said Abram A. Moore's 105 acre tract, N. 44° W. 212½ poles to the N. corner of the said tract in the centre of the New Vienna-Centreville road, and in the line of R. P. Findley's land; thence with said road and line, N. 43° E. 37$\frac{1}{10}$ poles to a stake corner to a 76½-acre tract deeded by W'm Moore and Susannah Moore, his wife, to Thomas C. Moore, where a stone, another corner to said tract, and corner to R. P. Findley's tract, bears N. 43° E. 25¼ links; thence with the line of said Thomas C. Moore's tract S. 44° E. 214½ poles to a stake corner to a 76¼-acre tract
235 deeded by said W'm Moore and Susannah, his wife, to Margery A. Moore, where a maple, 12 inches in diameter, bears S. 60° W. 39 links; thence with the line of said tract S. 44¾ W. 37$\frac{1}{10}$ poles to

the beginning, containing forty-nine acres and two roods of land, more or less, at sixty-five dollars per acre.

Also another tract or parcel of land situate in the same county and State, and bounded as follows:

Beginning at a stone in the middle of the road leading from Wilmington to New Lexington; thence with said road S. 85° E. 76 1/10 poles to a stone in the N. E. line of the original survey; thence with Moore's survey, N. 42° 30′ W. 54 7/10 poles to a stone or stake in said line of said survey; thence S. 45° E. 52 2/10 poles to the place of beginning, containing eight and three-quarter acres of land, be the same more or less, being part of survey No. 994 in the name of Benjamin Templars, at seventy dollars per acre.

Also another tract or parcel of land situate and being part of Benjamin Templar's survey, No. 994, bounded and described as follows:

236 Beginning at a box-elder and ash in the N. W. line of Templar's survey, N. corner of George Hoskins, s'r, land; thence S. 45° W. 118.56 poles to a stake; thence N. 45° W. 84.28 poles to a stone in the centre of the road; thence N. 45° E. 118.56 poles to a stone corner of W'm Hoskins' land; thence S. 45° E. 84½ poles to the beginning, containing sixty-two acres three roods and twenty-two perches of land, at eighty dollars per acre.

Also another tract or parcel of land situate and being part of Benjamin Templar's survey, No. 994, bounded and described as follows:

Beginning at a stone in the centre of the Wilmington road, corner of J. N. Henry's land; thence with said road S. 1° 7′ E. 45.76 poles to a stone in the centre of said road, corner to John Powell's land; thence with said road S. 71° E. 20.40 rods to a stone, corner to A. Moore's land; thence with his line N. 47° E. 49 rods to another corner of A. Moore's land; thence with his line 44° W. 61 rods to another corner of A. Moore's land; thence with his line S. 46° W. 76 rods to the

237 place of beginning, containing 23 acres 3 roods and 15 perches of land, be the same more or less, at seventy dollars per acre.

Also another tract or parcel of land, bounded and described as follows:

Beginning at a stone in the Wilmington road, corner to A. Moore's land; thence with his line S. 46° W. 82.88 rods to a stone in the line of John Hoskins' land; thence with his line S. 43° E. 41½ rods to a stake or stone in the line of John Powell's land; thence with his line N. 47° E. 101.81 rods to a stake or stone in the Wilmington road; thence with said road N. 67° W. 45.76 rods to the beginning, containing twenty-four acres and 2⅛ perches of land, more or less, at seventy dollars per acre.

Given under our hands this 21st day of Dec., 1870.

P. A. STAMATS, *Sh'ff.*
JOEL BREWER.
T. L. ROGERS.

Demurrer.

Afterwards, to wit, on the 17th day of January, A. D. 1871, the defendant, by Henry A. Shepherd, his attorney, filed in the office

238 of the clerk of our said court here his demurrer, in the words and figures following, to wit:

Demurrer.

Court of common pleas, Clinton County, Ohio.

CYRUS M. WALKER, PL'FF.
vs.
ABRAM A. MOORE, DEF'T.

And the said defendant now comes and demurs to the petition of plaintiff, for the reasons following, to wit:

Because the petition does not state facts sufficient to constitute cause of action.

HENRY A. SHEPHERD,
Att'y for Def't.

Afterwards, in the term of February of our said court, to wit, on the 30th day of March, A. D. 1871, before the Hon. Le Roy Pope, judge, comes the parties to this suit, by their attorneys, and thereupon it is ordered, by and with the consent of all the parties, that the demurrer of the said defendant to the petition of the said plaintiff be, and the same is hereby, sustained.

On motion, leave is given plaintiff to amend his said petition
239 by May 1st, A. D. 1871.

Afterwards, in the term of February, A. D. 1871, of our said court, this cause was continued.

Afterwards, to wit, on the 1st day of May, A. D. 1871, the plaintiff, by Doan and Telfair, his attorneys, filed in the office of the clerk of our said court here his amended petition, in the words and figures following, to wit:

Amended petition.

Court of com. pleas, Clinton Co.

CYRUS M. WALKER, PL'FF,
vs.
ABRAM A. MOORE, DEF'T. } Amended petition.

And now comes the said plaintiff, and, by leave of court first had and obtained, amends his said petition, as follows:

He says that he was always ready and willing to deliver the said property and tender the same to the defendant as stated in the petition; that on the first day appointed and designated for the delivery of the first 250 head of hogs in the said contract specified, being the
240 sixth day of December, A. D. 1870, the said defendant, by voluntarily absenting himself from the place of delivery of said hogs, and by keeping out of the way of the plaintiff, prevented him from tendering to him said property; and the plaintiff further saith that he did tender to said defendant the said mentioned 250 head of hogs specified in said contract on said 17th day of December, A. D. 1870, being the time appointed for their delivery, as specified in said petition.

W. B. TELFAIR AND
A. W. DOAN,
Att'ys for Pl'ff.

THE STATE OF OHIO,
Clinton County, ss:

Cyrus M. Walker, the plaintiff in the above action, being first duly affirmed, says that the statements of the foregoing amended petition are true, as he verily believes.

C. M. WALKER.

Affirmed to before me and subscribed in my presence this 1st day of May, A. D. 1871.

L. D. REID,
Clerk.

241 Afterwards, in the term of June of our said court, to wit, on the 26th day of June, A. D. 1871, before the Hon. Le Roy Pope, judge, on motion of defendant, by his counsel, leave is given *time* to answer by August 15th, 1871.

Afterwards, in the term of June, A. D. 1871, of our said court, this cause was continued.

Afterwards, in the term of November of our said court, to wit, on the 6th day of December, A. D. 1872, before the Hon. Le Roy Pope, judge, leave to defendant to answer by February 15th, 1872.

Afterwards, in the term of November, A. D. 1871, of our said court, this cause was continued.

Afterwards, in the term of February of our said court, to wit, on the 1st day of March, 1872, before the hon. judge last aforesaid, leave to defendant to file answer by March 23rd, 1872.

Afterwards, in the term last aforesaid of our said court, to wit,
242 on the 25th day of March, A. D. 1872, before the hon. judge last aforesaid, absolute rule on defendant to file answer by April 3d, 1872.

Afterwards, to wit, on the 2nd day of April, A. D. 1872, the defendant, by Quinby and Hayes, his attorneys, filed in the office of the clerk of our said court here his motion, in the words and figures following, to wit:

Clinton County court of common pleas.

CYRUS M. WALKER
vs.
ABRAM A. MOORE.

Now comes the said Abram A. Moore, defendant, and moves the court here to order the said plaintiff, Cyrus M. Walker, to make his said petition definite and certainly, separating, stating, and numbering his said causes of action, so as to permit a distinct issue to be raised on each material fact constituting his causes of action.

ABRAM A. MOORE,
Per QUINBY & HAYES, *his Att'ys.*

243 Afterwards, in the term of February aforesaid of our said court, to wit, on the 4th day of April, A. D. 1872, before the Hon. Le Roy Pope, judge, on this day this cause was submitted to the court

upon the motion of the defendant to the petition of the plaintiff without argument. On consideration whereof the court do overrule said motion; to which ruling of the court the defendant, by his counsel, excepts.

Afterwards; to wit, on the 4th day of April, A. D. 1872, the defendant filed in the office of the clerk of our said court here his demurrer, in the words and figures following, to wit:

Demurrer.

In the court of com. pleas in & for Clinton Co.

CYRUS M. WALKER, PL'FF,
vs.
ABRAM A. MOORE, DEF'T.

Now comes the said defendant and demurs to the petition of the said plaintiff, for the reason that the said petition does not state facts sufficient to constitute a cause of action in favor of said plaintiff and against this defendant.

ABRAM A. MOORE,
244 By QUINBY AND HAYES, *Att'ys.*

Afterwards, in the term of February aforesaid of our said court, to wit, on the 6th day of April, A. D. 1872, before the hon. judge aforesaid, comes the said parties, by their attorneys, and thereupon this cause came on for hearing upon the demurrer of the said defendant to the petition of the said plaintiff, and was argued by counsel. One consideration whereof the court do overrule said demurrer; to which ruling of the court the defendant, by his counsel, excepts.

Absolute rule on defendant to file answer by May 15th, 1872.

Afterwards, in the term of February, A. D. 1872, of our said court, this cause was continued.

Afterwards, to wit, on the 15th day of June, A. D. 1872, the defendant, by Quinby and Hayes, his attorneys, filed in the office of the clerk of our said court here their answer, in the words and figures following, to wit:

245 *Answer.*

Court of common pleas, Clinton County.

CYRUS M. WALKER, PLAINTIFF,
vs.
ABRAM A. MOORE, DEF'T.

Now comes the said defendant and, for answer to the petition of the said plaintiff, saith that the said plaintiff ought not to have his said action against him, the said defendant; for that he saith that he, the said defendant, does not owe the said plaintiff the said sum of three thousand seven hundred and fifty-three and nineteen-hundredths dollars in manner and form as the said plaintiff hath in his said petition declared, nor any part thereof, and of this he puts himself upon the country.

A. A. MOORE,
By QUINBY & HAYES, *his Att'ys.*

THE STATE OF OHIO,
Clinton County, ss:

Abram A. Moore, being first duly affirmed, saith that he is the defendant in the above-named action, and that he believes the state-
246 ments of the foregoing answer are true, and the allegations denied by the foregoing answer are not true.

ABRAM A. MOORE.

Sworn to before me and subscribed in my presence by the said Abram A. Moore this 28th day of February, A. D. 1872.

L. D. REID, *Clerk.*

Afterwards, to wit, on the 17th day of June, A. D. 1872, the plaintiff, by Sloane and Telfair, his attorneys, filed in the office of the clerk of our said court here his motion, in the words and figures following, to wit:

Motion.

In the court of common pleas, Clinton County, O.

CYRUS M. WALKER, PL'FF,
vs.
ABRAM A. MOORE, DEF'T. } Motion.

The plaintiff moves the court to order to be stricken out from the files the paper-writing heretofore filed in this case, to wit, June 15, 1872, entitled "Answer," for the reason that the same is not in fact an answer to the plaintiff's petition.

247 Afterwards, in the term of June of our said court, to wit, on the 6th day of July, A. D. 1872, before the Hon. Le Roy Pope, judge, comes the said parties, by their attorneys, and thereupon this cause came on for hearing, upon the motion of plaintiff to strike the answer of the defendant from the files of the court for reasons on file, and was argued by counsel.

On consideration whereof, the court do sustain said motion.

To which ruling of the court the said defendant, by his counsel, excepts.

On motion, leave is given defendant to amend his answer by September 1st, 1872.

Afterwards, in the term of June, A. D. 1872, of our said court, this cause was continued.

Afterwards, on the 4th day of September, A. D. 1872, the defendant, by Quinby and Hayes, his attorneys, filed in the office of the clerk of our said court here his amended answer, in the words and figures following, to wit:

248 *Amended answer.*

In the court of common pleas, Clinton Co., O.

CYRUS M. WALKER
vs.
ABRAM A. MOORE.

Now comes the said defendant, and, by leave of court first had and obtained herein, amends his answer heretofore filed in this cause, and saith:

1. The said defendant admits the making of the contract in the said plaintiff's petition set forth.

2. The said defendant denies each and every other allegation and averments in plaintiff's petition, and of this he puts himself upon the country.

ABRAM A. MOORE,
Per QUINBY AND HAYES, *Att'ys.*

THE STATE OF OHIO,
Clinton County, ss:

Abram A. Moore, being by me first duly affirmed, saith that the several matters and things set forth in the foregoing answer are true in substance and in fact, to the best of his knowledge, information, and belief.

ABRAM A. MOORE.

Affirmed to before me and subscribed in my presence this 17th
249 day of August, A. D. 1872.

LEVI MILLS, *N. P., C. C., O.*

Fee, 40 cts.

Journal entry.

Afterwards, in the term of November of our said court, to wit, on the 9th day of December, A. D. 1872, before the Hon. Le Roy Pope, judge, on motion and at the instance of the parties interested, the following entry is permitted to be made, but not to stand as a precident in any other case or matter, to wit:

In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF ABRAM A. MOORE, bankrupt. } In bankruptcy.

It being made to appear to the court in this case that there is pending in the court of common pleas of Clinton Co., O., a case wherein Cyrus M. Walker is plaintiff, and the said Abram A. Moore is defendant, and a certain other case wherein Thomas H. Long is plaint-
250 iff against the said defendant, and that the amount in controversy between said parties in said cases are in dispute, the court do now order that said parties have leave to prosecute the said cases and proceed to judgement therein for the purpose of ascertaining the amounts due, which may be proved against the estate of the said Abram A. Moore, in bankruptcy.

Witness the Hon. Phillip B. Swing, judge of the said court, and the seal thereof, at Cincinnati, this 7th day of December, A. D. 1872, and in the 97 year of the Independence of the U. S. of America.

Attest: THOMAS AMBROSE, *Clerk.*
[SEAL.]

Afterwards, to wit, on the 30th day of December, A. D. 1872, there was filed in the office of the clerk of our said court here an affidavit, in the words and figures following, to wit:

Affidavit.

Court of common pleas, Clinton County, Ohio.

CYRUS M. WALKER, PLAINTIFF,
vs.
ABRAM A. MOORE, DEF'T. } Affidavit.

251 Now comes W'm M. Meek, who, being first duly sworn, saith: That on the 23rd day of November, A. D. 1872, the said defendant was duly adjudged a bankrupt; that on the 26th day of December, A. D. 1872, this affiant was duly notified of his appointment as assignee of the said Abram A. Moore, defendant; that prior to his appointment, as aforesaid, this affiant knew nothing of the matters and things in controversy between the parties to this cause; that on the 28th day of December, A. D. 1872, was the first opportunity that this affiant had of learning anything of the matters and things concerning this cause; that upon consultation with his counsel, and from what he hath learned of the matters and things in controversy herein, this affiant cannot proceed to trial at the present term of this court for the want of time to examine into the merits of this cause and prepare his defence.

W'M M. MEEK.

Sworn to before me, and subscribed in my presence, this 28th day of Dec., 1872.

L. D. REID, *Clerk.*

252 Afterwards, to wit, on the 30th day of December, A. D. 1872, the defendant, by Quinby and Hayes, his attorneys, filed in the office of the clerk of our said court here his motion for a continuance, in the words and figures following, to wit:

Motion.

Court of common pleas, Clinton Co., O.

C. M. WALKER, PL'FF,
vs.
ABRAM A. MOORE, DEF'T.

Now comes the defendant and moves the court here to dissolve the attachment heretofore granted in this cause, for the reason that the affidavit upon which the same was issued is insufficient in law.

Second.—Because the matters and things stated in said affidavit are not true.

QUINBY & HAYES,
Att'ys for Def't.

Afterwards, to wit, on the 31st day of Dec'r, A. D. 1872, the plaintiff, by Sloane & Telfair, his attorneys, filed in the office of the clerk of our said court here his motion, in the words and figures following, to wit:

253 *Motion.*

In the court of common pleas, Clinton County, O.

C. M. WALKER, PLAINTIFF,
vs.
ABRAM A. MOORE, DEF'T.

The plaintiff, by his counsel, moves the court to strike from the files the motion heretofore filed in this case by the defendant, for the reasons that the said defendant having been declared a bankrupt on his own petition, this court has not jurisdiction to try and decide the questions raised by said motion of defendant.

SLOANE & TELFAIR,
Att'ys for Plaintiff.

Afterwards, in the term of November of our said court, to wit, on the 31st day of December, A. D. 1872, before the Hon. Le Roy Pope, judge, on motion to the court by W'm M. Meek, by his counsel, and it appearing to the satisfaction of the court that the said Moore has been duly adjudged a bankrupt on his own petition, and that said Meek has been duly appointed and approved as assignee for said bankrupt,
254 leave is given to make said W'm M. Meek a party defendant to an' in this action, whereupon the said Meek, by his said counsel, enters his appearance to and in this action.

Motion for continuance overruled.

Thereupon comes said parties, by their attorneys, and this cause comes on for hearing upon the motion of defendant for a continuance, and was argued by counsel. On consideration whereof, the court do overrule said motion.

To which ruling of the court the defendant, by his counsel, excepts.

Motion of plaintiff to strike motion of def't from the files sustained.

Thereupon, this cause came on further for hearing, upon the motion of plaintiff to strike the motion of defendant to dissolve attachment herein from the files, for reason on file, and was argued by counsel. On consideration whereof, the court do sustain said motion, upon the ground that this court has not, since the defendant, A. A. Moore, has been adjudged a bankrupt in the U. S. district court, jurisdiction to dispose of the questions raised by said motion to dissolve attachment.

To which ruling of the court the defendant, by his counsel, excepts.

255 *Verdict.*

Thereupon came a jury, to wit, W'm Pond, J. M. Johnson, Frank Kelsay, Charles Crane, Elias Doan, Zimri Haines, Alexander Bennett, Elijah Lacey, Joseph T. Coat, J. A. Brown, Josephus Blair, and D. J. Foland, who were duly empannelled, sworn, and affirmed the truth to speak upon the issues joined between the parties, who upon their oaths and affirmations aforesaid do return into court here their verdict in writing, in the words and figures following, to wit:

We, the jury, find in favor of the plaintiff and against the defendant, Abram A. Moore, damages in the sum of four thousand one hundred and eighty-nine and $\frac{19}{100}$ dollars.

W'M BOND,
Foreman.

It is therefore considered by the court that the said plaintiff recover of the said defendant, Abram A. Moore, the said sum of four thousand one hundred and eighty-nine and $\frac{12}{100}$ dollars, his damages as aforesaid assessed, and also his costs herein expended, taxed to $

Afterwards, to wit, on the 2nd day of January, A. D. 1873, the
256 defendant, by his attorneys, filed in the office of the clerk of our said court here his motion for a new trial, in the words and figures following, to wit:

Motion for new trial.

In the court of common pleas, Clinton County, O.

CYRUS M. WALKER } Motion.
vs.
A. A. MOORE. }

Now comes the said defendant, by Quinby and Hayes, his attorneys, and moves the court here for a new trial in this action, for the following reasons:

1st. The damages given in this case by the jury are excessive.

2nd. The verdict given in this case is against the weight of the evidence and contrary to the law of the case.

3rd. That the court, in the trial of this cause, erred in admitting the evidence offered by the plaintiff, to prove the weight of the hogs mentioned in plaintiff's petition, and the ma'ket-price of the said hogs, at the several times of the delivery of the same.

257 4th. That the court in the trial of this cause erred in admitting the evidence offerred by the plaintiff to prove the meaning among hog-dealers of the words "to weigh 275 lbs. and upwards."

5th. That the court erred in charging the jury that business hours extended from daylight till dark, and that before the defendant could refuse to accept said hogs, because not tendered within business hours, it must have been so dark that the defendant could not see the hogs that were tendered to him.

6th. That the court erred in charging the jury "that if there be a custom or usage among hog-dealers that attach' a particular reasoning to the expression "to weigh 275 lbs. and upwards," there, in construing this contract, you'll give it such meaning; but you must first find that there is such a custom or usage; and if you find that there is a custom or usage among hog-dealers as make the words "weigh" of such expression mean "average," then hogs of any weight, that otherwise
258 filled the contract, could be tendered, and the defendant would be bound to receive them.

7th. That the court erred in refusining to give the following charges asked by the defendant, to wit:

1st. That the contract in this case is an entirety, and that before the plaintiff can recover he must have tendered all of said 500 hogs in accordance with the terms of the contract, and if he did not so deliver all of said 500 hogs, but a part only, then he cannot recover for the part so delivered or tendered.

2nd. That if the parties meet at the place appointed for the delivery of the first 250 hogs, and the plaintiff tendered hogs which he knew would not comply with the terms of the contract, he could not afterwards, if hogs so tendered were refused by the defendant, make a valid or legal tender.

QUINBY & HAYES.
Att'ys for Def't.

259 *Motion overruled.*

Afterwards, in the term of November of our said court, to wit, on the third day of January, A. D. 1873, before the Hon. L. Roy Pope, judge, comes the said parties, by their attorneys, and thereupon this cause came on for hearing, upon the motion of defendents for a new trial herein, and was argued by counsel, on consideration whereof the court do overrule said motion, to which of the court the defendents, by his attorneys, excepts.

STATE OF OHIO,
Clinton County, ss:

I, L. D. Reid, clerk of the com. pleas court within and for the *court* aforesaid, do hereby certify the within and foregoing to be a full, true, and correct transcript of the record in the case wherein C. M. Walker was plaintiff and A. A. Moore defendent.

Witnesse my hand and the seal of the court, at Wilmington, this April 10, A. D. 1873.

[SEAL.] L. D. REID, *Clerk.*

Transcript & certif., $14.50, p'd by C. M. Walker.

260 Pleas at Wilmington, within and for the county of Clinton, began and holden on the 25th day of November, in the year of our Lord one thousand eight hundred and seventy-two, before the Hon. Le Roy Pope, judge of the court of common pleas within and for the third subdivision of the 2nd judicial district.

THOMAS C. MOORE, PLAINTIFF,
vs.
A. A. MOORE, DEFENDANT.

Be it remembered that heretofore, to wit, on the 1st day of March, A. D. 1872, the plaintiff, by Doan and White, his attorneys, filed in the office of the clerk of our said court here his petition against the said defendant in the word and figures following, to wit:

Petition.

Court of common pleas, Clinton County, O.

THOMAS C. MOORE, PL'FF,
vs.
ABRAM A. MOORE, DEF'T.

The said Thomas C. Moore, plaintiff, complains of the said Abram
261 A. Moore, defendent, for that the said defendent did on the 15th day of January, A. D. 1868, make his certain promissory note in writing of that date, (a copy of which is hereto attached,) marked "A," and then and there delivered the same to the said plaintiff, and thereby promised to pay to the said plaintiff, or his order, the sum of three thousand dollars in three years after date thereof, with interest from date, which period has since elapsed. Yet the said defendent hath not paid said sum of money or any part thereof to the said plaintiff, although often requested so to do, since the same became due and payable.

Wherefore the said plaintiff prays judgement against the said defendant for the said sum of $3,000.00, with interest from the 15th day of January, A. D. 1868.

DOAN AND WHITE,
Att'ys for Plaintiff.

262 STATE OF OHIO,
Clinton County, ss:

David T. White, being first duly sworn, upon his oath says that he is one of the attorneys of record for the plaintiff in the above action, and that said action is founded on a promissory note, a written instrument for the payment of money only, which said instrument is now in his possession and under his control, and that the matter and things set forth in the foregoing petition are true, as he verily believes.

D. T. WHITE.

Sworn before me and subscribed in my presence this 1st day of March, 1872.

L. D. REID, *Clerk.*

Copy of note A.

$3,000.00. Three years after date, for value received, I promise to pay Thomas C. Moore, or order, thirty hundred dollars, with interest from date, this the 15th day of January, A. D. 1868.

(Signed) ABRAM A. MOORE.

263 *Precipe.*

Court of common pleas, Clinton Co.

THOMAS C. MOORE, PL'FF, }
vs.
ABRAM A. MOORE, DEF'T. }

Clerk issue a summons in the above case directed to the sheriff for defendant, returnable according to law, endorsed suit brought for the recovery of money only, amount claimed $3,000.00, with interest from the 15th day of Jan'y, 1868.

M'ch 1, '72.

DOAN AND WHITE,
Atty's for Pl'ff.

Thereupon was issued out of the office of the clerk of our said court here our writ of summons, directed to the sheriff of Clinton Co., O., in the words and figures following, to wit:

THE STATE OF OHIO,
Clinton County, ss:

To the sheriff of the county of Clinton:

You are commanded to notify Abram A. Moore that he has been sued by Thomas C. Moore, plaintiff, in the court of common pleas
264 of Clinton County, and that unless he answer by the 30th of March, 1872, the petition of the said plaintiff against him filed in the clerk's office of said court such petition will be taken as true, and judgement rendered according.

You will make due return of this writ of summons on the 11th day of March, A. D. 1872.

Witness my hand and seal of the court, at Wilmington, this 1st day of March, A. D. 1872.

[SEAL.] L. D. REID, *Clerk.*

Which writ was returned by the sheriff endorsed as follows:

Received this writ March 1st, 1872. As commanded by this writ I summoned the within-named Abram A. Moore on the 6th day of March, 1872, by leaving at his usual place of residence a certified copy of this writ and the endorsements thereon. Dated this March 7, 1872.

Fees, $2.00.

J. L. HACKNEY, *Sheriff C. C., O.*

Afterwards, in the term of February of our said court, to wit, on
265 the 29th day of March, A. D. 1872, before the Hon. J. M. Smith, judge, leave to defendant to file answer by May 1st, 1872.

Afterwards, in the term of February, A. D. 1872, of our said court here, this cause was continued.

Afterwards, in the term of June of our said court, to wit, on the 6th day of July, A. D. 1872, before the Hon. Le Roy Pope, judge, leave to answer by Sept. 1st, 1872.

Afterwards, in the term of June, A. D. 1872, of our said court here, this cause was continued.

Afterwards, to wit, on the 29th day of Nov., A. D. 1872, the defendant, by Quinby and Hayes, his attorneys, filed in the office of the clerk of our said court here his motion in the words and figures following, to wit:

Motion.

Court of common pleas, Clinton Co.

THOMAS C. MOORE, PL'FF,
v.
ABRAM A. MOORE, DEF'T.

Now comes the said defendant and represents that he has upon
266 his own petition been adjudged a bankrupt, and therefore moves the court herein to stay proceedings in this cause until the question of his discharge in bankruptcy shall have been determined.

ABRAM A. MOORE,
Per QUINBY AND HAYES,
His Atty's.

Afterwards, in the term of November of our said court, to wit, on the 29th day of November, A. D. 1872, before the Hon. Le Roy Pope, motion of defendant by his counsel to stay proceedings until proceedings in bankruptcy be heard, after the arguments of counsel overruled, to which ruling the def't by his counsel excepts.

And now comes the said plaintiff by Doan & White, his att'ys, and the said defendant still failing to demur or answer unto the petition of the said plaintiff, it is considered that the said plaintiff is entitled to an account of the money due him in the premises, and the court do find,

with the consent of said plaintiff, that there is due him from the said defendant on the note set forth in his said petition the sum of
267 $1,877.00.

It is therefore considered by the court that the said plaintiff recover of the said defendant, Abram A. Moore, the said sum of three thousand eight hundred and seventy-seven dollars, and also his costs herein expended, taxed at $.

THE STATE OF OHIO,
Clinton County, ss:

I, L. D. Reid, clerk of the court of com. pleas within and for the county aforesaid, do certify the within and foregoing to be a full, true, and correct transcript of the case wherein Thomas C. Moore, plaintiff, and Abram A. Moore was defendant.

Witness my hand and the seal of the said court, at Wilmington, this 17th day of Dec'r, 1872.

L. D. REID, *Clerk.*

Pleas at Wilmington, within and for the county of Clinton and State of Ohio, begun and holden on the 17th day of June, in the
268 year of our Lord one thousand eight hundred and seventy-two, before the Hon. Le Roy Pope, judge of the court of common pleas within and for the third subdivision of the second judicial district.

JOHN F. LEVERTON, PLAINTIFF,
vs.
ABRAM A. MOORE ET AL., DEF'T'.

Be it remembered that heretofore, to wit, on the 21st day of March, A. D. 1872, the plaintiff, by A. G. Mathews, his attorney, filed in the office of the clerk of our said court here his petition against the said defendants in the words and figures following, to wit:

Petition.

Court of common pleas, Clinton County.

JOHN F. LEVERTON, PL'FF,
vs.
ABRAM A. MOORE, SAMUEL MOORE, DEF'TS.

The plaintiff says this his action is founded upon a promissory note, of which the following is a copy:

$1,339.50.] NEW LEXINGTON, O., *Oct.* 28, '70.

269 On or before the 25th day of Dec., 1871, we, or either of us, promise to pay to John F. Leverton the sum of thirteen hundred and thirty-nine dollars and fifty cents, for value received.

ABRAM A. MOORE.
SAMUEL J. MOORE.

[Stamp, 70 c.]

Attached to said note are internal-revenue stamps of the United States of the value of seventy cents.

2. There are no credits thereon.

3. There is due from the defendants to the plaintiff on said note the sum of thirteen hundred and thirty-nine dollars and fifty cents, ($1,339.50,) which he claims, with interest from the 25th day of December, A. D. 1871, and for which he asks judgement.

A. G. MATHEWS,
Pl'ff's Att'y.

THE STATE OF OHIO, -
Highland Co., ss:

John F. Leverton, being sworn, says that he believes the facts stated and allegations in the foregoing petition to be true.

JOHN F. LEVERTON.

270 Sworn to before me and signed in my presence this 19th day of March, 1872.

W'M M. MEEK,
Probate Judge.

40 c. p'd.

In the court of com. pleas, Clinton Co., O.

JOHN F. LEVERTON
vs.
ABRAM A. MOORE, SAMUEL J. MOORE.

To the clerk of said court:

Issue a summons upon the petition in the above case, returnable according to law. Amount claimed, $1,339.50, with interest from the 25th day of December, A. D. 1872.

A. G. MATHEWS,
Plaintiff's Attorney.

MARCH 21ST, 1872.

Thereupon was issued out of the office of the clerk of our said court our writ of summons, directed to the sheriff of Clinton Co., O., in the words and figures following, to wit:

THE STATE OF OHIO,
Clinton County, ss:

To the sheriff of the county of Clinton:

271 You are commanded to notify Abram A. Moore and Samuel J. Moore that they have been sued by John F. Leverton, plaintiff, in the court of common pleas of Clinton Co., Ohio, and that unless they answer by the 20th day of April, A. D. 1872, the petition of the said plaintiff against them filed in the clerk's office of said court, such petition will be taken as true and judgement rendered accordingly.

You will make due return of this summons on the 1st day of April, 1872.

Witness my hand and the seal of the court, at Wilmington, this 21st day of March, 1872.

[SEAL.] L. D. REID, *Clerk.*

Which writ was returned by the sheriff endorsed as follows:

Received March 21st, 1872. I served Abram A. Moore personally, by delivering to him a true copy of this writ, with the endorsements thereon; and Samuel J. Moore by leaving a true copy at his usual place

of residence, with the endorsements thereon. Dated this March 29th, 1872.

J. L. HACKNEY, *Sheriff*,

Fee, $2.80.

272 By H. B. CRUMLEY, *Dep'y.*

Afterwards, in the term of February, 1872, of our said court, this cause was continued.

Afterwards, in the term of June of our said court, to wit, on the 17th day of June, A. D. 1872, before the Hon. Le Roy Pope, judge, this cause being called in its proper order, and the defendants being in default, having failed to answer or demur to the plaintiff's petition, this cause was submitted to the court; whereupon the court, being fully advised in the premises, does find that there is due the plaintiff from the defendants, on the promissory note mentioned and set out in the petition, including interest to the first day of the present term of this court, the sum of thirteen hundred & seventy-eight dollars and eleven cents, (1,378.11.)

It is therefore considered by the court that the said plaintiff recover of the said defendants the said sum of thirteen hundred and seventy-eight dollars and eleven cents, together with his costs in and about his suit in this behalf expended, taxed to $.

273 Afterwards, in the term last aforesaid, to wit, on the 19th day of June, A. D. 1872, before the Hon. Le Roy Pope, judge, this cause came on to be heard on the motion of the defendant, Samuel J. Moore, that the fact that he is surety only on the note on which judgement is rendered herein be entered of record, and it appearing to the court that the said Samuel J. Moore signed the said note as surety for his co-defendant, Abram A. Moore, it is hereby certified that Abram A. Moore is principal debtor herein and that Samuel J. Moore is surety.

THE STATE OF OHIO,
Clinton County, ss :

I, L. D. Reid, clerk of the court of common pleas within and for the county aforesaid, do hereby certify the foregoing to be a full, true, and correct transcript of the record in the case of John F. Leverton against A. A. Moore et al.

Witness my hand and seal of the court, at Wilmington, this 14 July, 1873.

Fee, 2.00; not paid.

L. D. REID, *Clerk.*

274 STATE OF OHIO,
Clinton County, ss :

I also certify that upon the judgement of John Leverton vs. Abram A. Moore an execution was issued, directed to the sheriff of Clinton county, Ohio, which said execution was returned by the sh'ff endorsed as follows: "Rec'd this writ June 28th, A. D. 1872. I did not serve the same, by reason of Samuel Moore having a receipt in full from John Leverton for judgement and interest.

Total cost, 22.99.

Witness my hand and seal of said court, at Wilmington, the 15th day of July, A. D. 1873.

[SEAL.] L. D. REID, *Clk.*

Pleas at Wilmington, within and for the county of Clinton and State of Ohio, began and holden on the 26th day of February, in the year of our Lord one thousand eight hundred and seventy-two, before the Hon. Le Roy Pope, judge of the court of common pleas within and for the third subdivision of the second judicial district.

275 JOHN SAVAGE, PLAINTIFF,
vs.
ABRAM A. MOORE, DEFENDENT.

Be it remembered that heretofore, to wit, on the 29th day of February, A. D. 1872, the plaintiff, by J. S. & W. W. Savage, his attorneys, filed in the office of the clerk of said court here his petition against the said defendent in the words and figures following, to wit:

Petition.

In the court com. pleas, Clinton Co., Ohio.

JOHN SAVAGE, PLAINTIFF,
vs.
ABRAM A. MOORE AND SAMUEL J. MOORE, det'ts. } Petition.

The said John Savage, plaintiff, complains of said Abram A. Moore, and Samuel J. Moore, defendents, for that the said defendents, on the 12th day of November, A. D. 1870, at New Lexington, Highland Co., Ohio, made their promissory note in writing of that date, and
276 then and there delivered the same to said plaintiff, and thereby promised to pay to the order of the said plaintiff, on or before the 1st day of January, A. D. 1872, the sum of four hundred and fifty-nine and $\frac{80}{100}$ dollars ($459.80,) which period has since elapsed; yet the said defendents have not paid the said sum of money, nor any part thereof, to the said plaintiff, although often requested so to do. Wherefore the said plaintiff prays judgement against the said defendents for the sum of $459.80, together with interest thereon at the rate of 6 % from the 1st day of January, 1872, and costs of suit.

J. S. AND W. W. SAVAGE,
Att'ys for Plaintiff.

Copy of note.

$459.80. NEW LEXINGTON, OHIO, *Nov.* 12, 1870.

On or before January 1st, 1872, we, or either of us, promise to pay to the order of John Savage four hundred and fifty-nine and $\frac{80}{100}$ dollars, for value received.

ABRAM A. MOORE,
SAMUEL J. MOORE.

[Int. rev. stamp.]

277 W. W. Savage, being first duly sworn, on oath says that he is one of the attorneys of record of the said John Savage, plaintiff in the aforesaid action, and that the said action is found' on a written instrument for the paym't of money only, and that such written instrument in the possession of this affiant as the attorney of this said plaintiff; and this further saith, that the several matters and things contained in

said petition are, according to the best of his knowledge, information, and belief, true in substance and in fact; and further he saith not.

W. W. SAVAGE.

Subscribed in my presence and sworn before me this 29th day of February, A. D. 1872.

L. D. REID, *Clerk.*

Precipe.

In the court of com. pleas, Clinton Co., Ohio.

JOHN SAVAGE, PLAINTIFF,
vs.
ABRAM A. MOORE AND SAMUEL J. MOORE, det'ts.

278 Clerk will issue summons in the above action, returnable according to law, endorsed for the recovery of money. Amount claimed, $459.80, with interest at 6 % from the 1st day of January, A. D. 1872.

J. S. AND W. W. SAVAGE,
Att'ys for Plaintiff.

I acknowledge myself security for costs for the plaintiff in the above case this 29th Feb., 1872.

J. S. SAVAGE.

Summons.

Thereupon was issued out of the office of the clerk of said court here our writ of summons, directed to the sheriff of Clinton Co., O., in the words and figures to wit:

THE STATE OF OHIO,
Clinton Co., ss:

To the sheriff of the county of Clinton:

You are commanded to notify Abram A. Moore and Samuel J. Moore that they have been sued by John Savage, plaintiff, in the court of common pleas of Clinton County, O., and that unless they an-
279 swer by the 30th day of March, A. D. 1872, the petition of said plaintiff against them filed in the office of the clerk of said court, such petition will be taken as true, and judgement rendered accordingly.

You will make due return of this summons on the 11th day of March, A. D. 1872.

Witness my hand and the seal of said court at Wilmington, this 29th day of February, 1872.

L. D. REID, *Clerk.*

Which writ was returned by the sheriff indorsed as follows:

Sheriff' return.

Rec'd this writ Feb. 29th, 1872. I served Abram A. Moore and Samuel J. Moore by leaving a true copy of this writ at their usual places of residence, with the indorsement thereon. Fees $3.00.

J. S. HACKNEY,
Sheriff C. C., Ohio.

Afterwards, to wit, on the 29th day of March, A. D. 1872, the defendant, Samuel J. Moore, by W. B. Telfair, his attorney, filed
280 in the office of the clerk of our said court here his answer in the words and figures following, to wit:

Answer of Samuel J. Moore.

Court of common pleas, Clinton County, Ohio.

JOHN SAVAGE, PLAINTIFF,
vs.
ABRAM A. MOORE, SAMUEL J. MOORE,
defts.

The defendant, Samuel J. Moore, for answer to the petition of plaintiff, says that he admits the signing of the note in the petition set forth, but says that he signed the same as security only, receiving no part of the proceeds therefor. He therefore asks that in any judgement to be taken herein he be certified as surety, and Abram A. Moore as principal.

W. B. TELFAIR,
Att'y for Pl'ff.

THE STATE OF OHIO,
Clinton County, ss:

The defendant, Samuel J. Moore, in the above-stated action, being first duly sworn, says that the acts stated in his forgoing an-
281 swer are true, as he verily believes.

SAMUEL J. MOORE.

Sworn to before me and subscribed in my presence this 28th day of March, A. D. 1872.

L. D. REID, *Clerk.*

Decree.

Afterwards, in the term of February of our said court, to wit, on the 1st day of April, A. D. 1872, before the Hon. Le Roy Pope, judge, comes the said plaintiff, by J. S. and W. W. Savage, his attorneys, and the said defendant, Samuel J. Moore, by W. B. Telfair, his attorney, who files his answer herein, consenting that judgement may be rendered against him as surety only; and the said defendant, Abram A. Moore, still failing to demur or answer unto the petition of plaintiff, it is considered that the said plaintiff is entitled to an account of the money due him in the premises, and the court do find, with the assent of said plaintiff, that there is due him from the said Abram A. Moore, as principal, and the said Samuel J. Moore, as surety, the sum of $466.69, as evidenced by the note in the plaintiff's petition set forth.

282 It is therefore considered by the court that the said plaintiff recover of the said Abram A. Moore, as principal, and the said Samuel J. Moore, as surety, the said sum of four hundred and sixty-six & $\frac{69}{100}$ dollars, so as aforesaid founded due, and also his costs herein expended, taxed to $, and that execution issue accordingly.

THE STATE OF OHIO,
Clinton County, ss:

I, L. D. Reid, clerk of the court of common pleas within and for the county aforesaid, do hereby certify the foregoing to be a full, true, and

correct transcript of the record in the case of John Savage vs. A. A. Moore et al.

Witness my hand and the seal of the court at Wilmington, this 14th July, 1873.

L. D. REID, *Clerk.*

Fee, 3.50.

Plaintiff's cost herein taxed, 10.35, p'd by Samuel J. Moore.

283 In the district court of the United States for the southern district of Ohio.

IN THE MATTER OF W'M M. MEEK, AS signee of A. A. Moore, bankrupt,
vs.
C. M. WALKER AND OTHERS.

The deposition of witnesses heard and taken before me on the trial of the issue presented by me for the decision of the jury in the above-named case.

JOSEPH CRAVAT:

I live in New Vienna, Clinton County, Ohio. In the latter part of the fall of 1870 I had a conversation with Abram A. Moore, about conveying his property, in Bowers' drug-store, in Vienna, in October or November. I think I asked Mr. Moore why it was that he had got into such great trouble. He answered that he supposed that they wanted his property. He stated to me that he had got into trouble with the Townsends and the hog-traders, and that he would be broke up if
284 *they* had to pay all that they wanted him to; and he also stated that Si. M. Walker had delivered him hogs that he didn't want to receive on the account of them not being the kinds of hogs that he wanted. And he stated that he intended to have his property covered up so as these thieves could not get it.

Cross-examination by N. Barrere and C. H. Collins:

I don't remember that he said anything about his property before I asked him how he got into such trouble. He said he was going to have his property put out of his hands, or covered up, so that the thieves could not get it. I believe he used both "put out of his hands" and "covered up."

I judge it was along in October or November—about that time. There was no person present when the conversation took place than Mr. Moore and myself. I told C. M. Walker the conversation I had had with Moore, but how long after the conversation with Moore I cannot say, but it was in the latter part of the winter of 1870, or early in 1871. I told it to Walker in Bowers' drug-store in Vienna. I never told the conversation of Moore to Walker except that one time.

J. A. CRAVAT.

285 CHARLES C. BOWERS, being duly sworn:

I live in New Vienna, Clinton Co., O.; am acquainted with Abram A. Moore; am acquainted with John Milner, j'r. With Abram A. Moore was acquainted in November, 1870, and for a number of years before; and I became acquainted with John Milner, j'r, about that time.

perhaps a little before. In November, 1870, I was acting as justice of peace and carrying on a drug-store in New Vienna, Clinton Co., Ohio. In November, 1870, about the middle, Abram A. Moore came to me to get me to write a deed from him and wife to John Milner, j'r, for 5, 6, or 7 tracts of land, situate in Clinton Co., Ohio. I wrote for Moore, and he and his wife came to the office and signed and acknowledged the deed, and he took it away. I think the lands described I wrote is the same as the seven tracts of land described in the certified copy of a deed now produced to me; and I have no doubts the said certified copy is a true copy of the deed I wrote for Moore. I wrote—commenced writing—the deed on the day
286 Moore applied to me to write it and finished it the next. This is my recollection. It was signed and acknowledged two or three days afterwards. Moore applied to me to write it. On neither of the occasions on which I saw Moore, in relation to the writing of the deed and its execution, was John Milner with him. Moore told me to put in the deed as consideration $21,300.00. M'r Moore, when he asked me to write deed, told me Milner was his father-in-law. I did no other writing for Moore, wrote no notes, no mortgages. When M'r Moore applied to me the deed, I asked him, "Abe what does this mean?" His reply was, "We are going to make a deed for this land to my father-in-law, and he is to make a deed back to my wife." The reason he gave me was, to express it in his words, "that the Townsend thieves should never get any of my property." M'r Moore was at that time indicted in the court of com. pleas on a charge of an attempt to commit a rape on the person of Joseph Townsend's wife, as I understood it. There
287 was also a civil suit pending against Moore in the same court, brought by Townsend and wife, for $2,000.00 damages for abuse of the wife in the alleged attempt to commit rape. After the execution of the deed in December, 1870, Alexander Smith, of Highland Co., brought suit before me against Moore to collect a claim of something over fifty dollars. Moore was summoned to appear for trial on a certain day in December. Some three or four days before the appearance day he came to see me to tell me he could not appear for trial on that day. I asked him the reasons, and he said he and his wife wanted to attend an infair; that his father-in-law was on that day going to bring home a new wife, and he wanted to attend the infair. I then asked Moore if he had that deed matter fixed up, that there might be some danger if there was a new wife coming on, and he told me that it was all fixed up. In none of these conversations was Milner present. The conversation I have last stated with Moore may have been in December, 1871, but I think it was in December, 1870.

C. C. BOWERS.

288 Recalled by consent of parties.

Since thinking the matter over I feel now very sure that the last conversation which I had with Abram A. Moore (mentioned by me in my former examination) was in the early part of December, 1870.

Question. What do you know, if anything, as to the property-circumstances of Abram A. Moore prior to the 17th day of November, 1870?

Answer. He owned the land deeded away on the 17th day of November, 1870, and had a good deal of stock, I think, upon the premises, and generally considered good previous to the time he got into the trouble with M'r's Townsend. After that there were a great many doubts expressed as to the man's ability, financially. Some time in the latter part of the summer or early in the fall of 1870, and before I wrote the deed

of November, 1870, for him, I learned that he had made certain hog contracts which it was thought would involve him in pecuniary losses. I think he himself was the first one who told me of these contracts.
289 He told me that they were going to loose a good deal of money.
My recollection and understanding is that the civil suit by Townsend and wife against Moore for damages was brought early in the spring of 1870. I think the report before the making of the deed of November, 1870, was quite general that M'r Moore was in failing circumstances. The report was general in the village of Vienna, and in the regions round about.

(The counsel for John Milner, j'r, objects to all the above statements of the witness, as the existence of the above-named rumors and the generalness of their circulation, but the court overruled the objection and the said counsel excepted.)

Cross-examination by counsel for John Milner, j'r:

The opinion and rumor that Moore was in failing circumstances were based on both the Townsend difficulty and the hog contract. My opinion when M'r Moore come to get me to write the deed in November,
290 1870, was that he was in difficulty, or, in other words, failing circumstances. And I then thought that he then thought so too. When I asked Moore, on the occasion on which he came to get me to write the deed, "What does this mean, Abe?" I wanted to know what he was proposing to do, Moore having previously told me that the hog contract would loose him a good deal of money. At the time I wrote the deed I did not think Moore entirely insolvent; that is, I thought all his property honestly applied would be sufficient to pay all his debts.

C. C. BOWERS.

Exceptions by N. Barrere and C. H. Collins, attorneys for John Milner, j'r.

To the questions asking for a conversation with Moore after the execution of the deed, not in the presence of Milner, and to the answer giving said conversation, Milner objects that both the questions and answers are incompetent, and assigns as a reason that no declarations of Abram A. Moore after he had made his deed could bind Milner, or reflect on the nature of the conveyance, or impeach the conveyance,
291 and asks that this portion of the deposition be excluded from the jury; but the register admitted said evidence, but only as reflecting upon the question of Moore's intention in making said deed.

JOHN HARRISON being duly sworn:

I live in New Vienna, Clinton County, Ohio; I was 35 years of age the 11th day of April, 1873; I am acquainted with Abram A. Moore, and have been acquainted with him for the last sixteen or eighteen years.

In 1870, and for a number of years previous, Moore lived from two to two and a half miles distant from Vienna. In 1870, to the best of my judgement, Moore owned between two and three hundred acres of land in Clinton County, Ohio. I know his farm and was frequently on it. His farm was very well stocked with cattle and sheep, hogs, and horses.

In November, 1870, I think about the first or between the first and middle of November, in New Vienna, on Main street, just below Bowers' drug store, at the corner of Odd Fellows' Hall, I had a conversation
292 with Abram A. Moore. I had in my possession a note on M'r

Moore belonging to my son, who was then in Cincinnati, given for borrowed money, then overdue. I called Moore out of the drug store to talk about it. He said that he would pay the note perhaps that week. He then said to me, "Have you heard of the scrape that I have got into?" I said I had, and asked him how he thought it would go with him. He said he did not think that that would amount to anything from the character the woman had borne before marriage and since.

He spoke of M'r's Townsend. He said she charged him with attempting to commit a rape upon her. He said they were prosecuting him on that charge in court. I remarked to him that such things as that had frequently broken up men that were worth as much money as he was. He said that he was not afraid of that, for that he had money enough to pay off every just debt, honest debt, that he owed in the world, without troubling his land. I said that I would hate for my son to lose that money, as he had come by it honestly. He said, "there is no dan-
293 ger of that, John: he shall have his money." In the same month and year, on along towards the latter part of November, having heard a rumor, or that Moore had conveyed away his real estate, and having been told by Squire Charles C. Bowers that it was so and that he had written the deed, I, on meeting M'r Moore in Vienna, in Bowers' drug store, asked him again concerning the money he owed my son.

(Here the counsel for John Milner, j'r, objected to any evidence of what Moore may have said to the witness about the conveyance of his land after the conveyance had been made; but the court overruled the objection, and the said counsel excepted.)

His reply was, "I am hard up for money at this time: can't do anything now: but in a few days think I will pay that off." Then I said to him, "You have sold your lands, have you not?" He answered, "I have, but that will not amount to anything." Then he went on to say that "Walker and Long, the sharps or shirks, (I don't know which word he used,) were trying to get four, five, or six thousand dollars off of him in the way of rascality. I am determined never to pay a dollar of money as dishonestly claimed as that is, but all my just, honest debts I expect to pay, and then have plenty, so that my family shall never
294 suffer." I then asked him again how soon he could pay the money to my son on the note. He answered, "If I could collect money that is coming to me, my credit is good enough *to* yet to borrow some. I will borrow some to pay these notes first." The note is still unpaid.

Cross-examination by counsel for John Milner, j'r:

I am satisfied that the conversation which I last detailed between myself and Moore was not before the 17 of November, 1879, but I believe it was after that date.

JOHN HARRISON.

JONATHAN WRIGHT being duly sworn:

I live in New Vienna, Clinton County, Ohio; I was fifty five years of age the 23d of October, 1872; I know Abram A. Moore, and have known him for about twenty years. I lived in Vienna in 1870, and for a number of years previous to that date; Moore lives between two and three miles from Vienna. I have known John Milner, j'r, for more than twenty years, but not intimately. M'r Milner lives in Highland County, about
295 ten miles from Vienna, and did live at the same place in 1870, about seven and a half or eight miles from where Moore then lived; Moore is Milner's son-in-law. On the road between Vienna and where Moore then lived, in September, I think, 1870—I know it was in 1870—

I had a conversationwith Abram A. Moore. He told me he had a notion of fixing his property so as to keep the false swearers and thieves (I think these were the words) from getting a hold of it. He then went on to state how he had worked and labored to procure what he had, and that it (the affair with the Townsends) was a trap set to break him up and get what property he had. He said that they never prosecuted him on the charge of an assault to commit a rape on M'r's Townsend. He did not at that time say anything about any other trouble, I believe. In the fall of 1870, and the winter of 1870–'71, the report was general in the neighborhood of Vienna that Moore had conveyed away his property; the general talk of the county and village was that Moore had conveyed away his property to keep from paying his creditors. For sometime before the 17th of November, 1870, the rumor was common in the neighborhood that Townsend had sued Moore for a large amount of damages for
296 injuries done to M'r's Townsend's person in the alleged attempt to commit a rape upon her. It was also generally rumored that Moore had made some hog contracts which were likely to result to his pecuniary injury; but when this last rumor became current I cannot exactly say, but it was in circulation in the fall of 1870 some time. This report got up quite a feeling, sensation, and talk in the neighborhood and village in the fall of 1870.

(To the evidence of the existence of said rumors and their currency the said John Milner, j'r, by his counsel, objected; but the register overruled the objection and admitted the evidence, and said counsel excepted.)

Cross-examination by the counsel for John Milner, j'r:

I think Moore was considered good until the rumors about his troubles and the conveyance of his property. The excitement first commenced in the neighborhood when the charge of assault to commit a rape was made and the examination before the justice; sides were taken; some said it would break him up; others, that it would not amount to anything; the report that he was broken up and could not pay his debts did not, I think, become common until it was rumored that he
297 had conveyed away his property.

Question. What was the rumor you heard about the hog contract?

I heard that he had bought hogs too high, had agreed to pay more than they were worth, that he could not out on it. I don't know that I can state who told me so: that I can name any certain person. Traders often stopped at our shop (meat-shop) and talked about it that Moore had contracted hogs too high and would loose money on them. After these rumors I did not consider M'r Moore financially good; but I did so consider him up to the time I heard of his selling his property.

I think I first heard that Moore had conveyed his property to his father-in-law in November, 1870. I cannot say who told me first.

Re-examined by the counsel for the assignee, and for the defendants, Walker and Long, and other defendants:

Question. You say you cannot name any particular person whom you heard talking about Moore's hog contracts, and that he would lose money on them. State how many persons you heard so talk about, and during what periods of time you heard the talk.

298 I cannot say how many I heard so talk, but as high as six or eight. I cannot fix any definite number; I cannot fix the time definitely; it was about the opening of the hog market, in the fall of 1870, about the time traders and farmers would meet and talk about buying and selling.

Question. Were you chosen an arbitrator on the controversy arising on Moore's contract with Thomas H. Long; if so, when were you so chosen, and had you heard the talk about Moore's hog contract before?

Answer. I was chosen and did act as arbitrator in that matter, but can't state exactly when, nor whether I had then heard the rumors about Moore's hog contract or not, (I mean the rumors other than the contract with Long.)

JONATHAN WRIGHT,

Exceptions by N. Barrere and C. H. Collins, attorneys for John Milner, j'r.

As to all the testimony of Johathan Wright tending to prove the insolvency of Moore by reports and rumors, defendant, John Milner, j'r, objects; defendant further objects to any of said testimony showing that it was reported in the fall and winter of 1870 and 1871 that
299 Moore had conveyed his property away. Defendant, John Milner, j'r, asks the register to exclude this testimony from the jury. The register overruled said request, to which said John Milner, j'r, excepts.

J. N. HENRY being duly sworn:

I live in New Vienna, Clinton County, Ohio. In 1870 I lived in Wayne Township, Clinton County, Ohio, on a farm adjoining Abram A. Moore. I am forty-six years old. I am acquainted with Abram A. Moore and have been upwards of twenty years. I am acquainted John Milner, j'r, who is Moore's father-in-law. In the latter part of the winter of 1869–'70 I had a conversation with Abram A. Moore, at his own place of residence in Clinton County, Ohio. He was talking to me about the Townsend trouble, and said there was no telling the trouble these false-swearing thieves would get him into. I told him I thought it might not amount to much. He said they had got him into the harness and there was no telling how long they would law it, and that if the Townsends did not get it the lawyers would. He said he wanted to pay his honest debts; but
300 it was his wish, and he was thinking of so fixing his property as that the Townsends and the lawyers could not get at it. It was understood that Moore owed some debts before he got into the Townsend trouble, and that he had made some hog contracts whereby (the price of pork and bacon having gone down) he would lose money; and it was thought and rumored that he would not be able to meet his obligations and pay his debts. I, myself, thought that he had property to pay all his debts, including his liabilities on the hog contract, but excluding the Townsend claim for damages.

There was much talk in the neighborhood, his property, circumstances, and conditions, some saying that they thought he would be able to pay all his debts and liabilities, and others that he would not. This talk was general in the town of Vienna and the country round about. There was a good deal of excitement over it. This talk was going on pretty generally over the country before the 17th of November, 1870. I was in the stock business, and traveling about over the country a great deal. No one ever, I think, was fearful of losing anything by Moore until after he made the deed to his father-in-law.

301 (The counsel for John Milner, j'r, objected to the evidence as to the existence of the rumors above stated, but the court overruled the objection, and his said counsel excepted.)

Cross-examination by counsel for Milner:

I heard more on the subject of Moore's probable losses in the Town

send matter than in regard to anything else; but it was known early in the spring of 1870 that Moore would lose heavily on the hog contract, and then and after I heard both classes of losses talked about as affecting his standing and solvency. I lived right by Moore, and as I traveled over the country, the people, knowing I was a neighbor of Moore's, would talk to me about his affairs, and hence it was, I suppose, that I had so much talk about it, more at least than I would otherwise have had. I did not myself become satisfied that Moore's property would not be sufficient to pay all his debts and liabilities at any time before I heard of his having conveyed away his landed property to his father-in-law, and he refused to pay his debts; then I did suppose that though his property might be, if honestly applied, to pay all his debts and liabilities, (leaving out of the calculation the Townsend claims,)
302 yet that there was danger of some of his creditors losing by him.

I have a judgement against Moore, recovered about a year ago, for about one hundred and sixty dollars.

JOHN N. HENRY.

JAMES MORRIS being duly affirmed:

I live in Wayne Township, Clinton County, Ohio, some five miles from the town of Vienna, and was living there in the year 1870. I will be sixty-six the 19th day of December next. I am acquainted with Abram A. Moore, and have been for twenty years. I am acquainted with John Milner, j'r, and have been, I suppose, equally as long as with Moore. On the 20th day of December, A. D. 1870, I had a conversation with Abram A. Moore at his home. He was speaking about the Townsend cases: he said he had enough to pay all his honest debts, and he intended to do it; that no man should ever lose a cent by him, to whom he owed any honest debt; that he had deeded his land to his father-in-law, and his father-in-law had deeded it back to his (Moore's) wife. We spoke something of the hog contracts, but I cannot state what he said
303 about them. On some two or three other occasions I heard Moore talk about the Townsend claim for damages, and said that it was unjust, and intimated that he did not intend to pay. All I can further say is that I did have two or three other conversations with Moore of the same import and to the same effect as the one which I have detailed, but where and when they occurred I cannot with any degree of certainty or accuracy undertake to say. They were all to the best of my recollection on Moore's own place, and on occasions when I called upon him to see about the payment of the note I held on him. I fix the date of the conversation which I have detailed as being the 20th of December, 1870, from a credit on the back of the note I held and still hold on Moore of one hundred and thirty dollars. I am confident the conversation occurred on the day I received the $130.00. I received from Moore on the 11th day of December, 1870, $171.92 on the same note, and which is credited thereon of that date. I have no distinct recollection of any conversation I had with Moore that day.

Cross-examined by counsel for John Milner, j'r:

Moore, at both the dates mentioned, offered to pay me the whole
304 of my note in property if I would take it; he offered me hogs, a horse, cattle, cow. I took some hogs and a horse. The hogs are counted to the first credit on the note, and the horse to the last. He offered the property at what I thought reasonable prices.

(The counsel for John Milner objects to the above evidence in-chief of the above witness, for the reason that it was, as they maintained, a con-

versation with Moore, and after the execution and delivery of the deed from Moore and wife to him, the said John Milner, j'r. But the court overruled the objection and admitted the evidence, but for the purpose only of reflecting upon the question of Moore's intention in making the said deed; to which ruling and judgement the said Milner by his counsel excepts.)

JAMES MORRIS.

HENRY A. SHEPHERD being duly sworn:

Abram A. Moore was first arrested, I think, on the 21st day of November, 1869, on the charge of an assault with intent to commit a rape upon the person of Sarah E. Townsend, on a warrant from Justice J.
305 H. McFadden. The proceedings were quashed and Moore discharged for irregularities and informalities and other defects in the papers. He was again arrested, I think, on the 25th November, A. D. 1869, on the same charge. The examination before the justice was had, I think, on the 10th day of December, 1869. Moore was recognized to the court of common pleas to answer to the charge. He was indicted at the next succeeding term of the court (commencing in January, I think) on the same charge. The prosecution pended 'til, I think, the fall term of 1871, when it was disposed of by a plea of guilty to a simple assault, a nolle as to the intent to commit a rape, and a fine of $25.00 and costs. The first suit for damages against Moore for inquiries to Sarah E. Townsend in the alleged assault on her with intent to commit a rape was commenced on the record of December, 1869. The suit was brought in the name of Joseph T. Townsend as plaintiff, and was for $10,000.00 damages.

It is still pending. On the 15th July, 1870, another suit was brought against Moore for some cause of action in the name of Joseph T. Townsend and Sarah E. Townsend, his wife, claiming $20,000.00 damages.
306 This action is still pending. Service was had in both cases, and as already said, both are still pending. I was and am Moore's attorney in the civil cases and one of his attorneys in the criminal case.

HENRY A. SHEPHERD.

WM H. WEST being first duly sworn:

I live, and in 1870 lived, about three-quarters of a mile from New Vienna, Clinton County, Ohio. I am 47 years of age; am acquainted with Abram A. Moore; became acquainted with him in the summer of 1869. I have known John Milner, j'r, for about two years; was engaged in farming in 1870. I know nothing of Moore's property-circumstances except from the talk about him on the streets and generally through our neighborhood.

About the 13th of January, 1870, I first began to hear talk. The report was that "Abram was gone up" financially. His troubles were the Townsend prosecution and suit for damages and some hog contracts he had made. The hog contracts were looked upon as more serious than anything else. He had contracted the hogs purchased there the year before: the time had not come for delivery; hogs had gone, and the
307 market was still declining, and it was thought he would lose heavily on these contracts. This was the talk along in the summer of 1870. I am confident I heard this talk before the 17th of November, 1870; it was general in the neighborhood before November, 1870.

WM H. WEST.

(The defendant, Milner, by his counsel, objects to the above evidence as being incompetent, because only hearsay and rumor. The objection was overruled, the evidence admitted, and Milner, by his counsel, excepted.)

DR JAMES F. BOWERS being duly sworn:

I live in New Lexington, Highland County, Ohio; am thirty-two years old. I moved to New Lexington December 8th, 1870, from New Vienna, Clinton County, Ohio, where I have resided from the time of my birth, except two years, when I lived in Michigan; since I have lived in Lexington I have been engaged in the practice of medicine generally throughout the neighborhood. From September, 1869, until December, 1870, I lived with my father, Charles C. Bowers, in Vienna, and a part of the time assisted him in his drug-store at that place. I have been acquainted with Abram A. Moore 15 or 20 years. I am not per-
308 son*personal*ly acquainted with John Milner, jr. He lives, I think, some four or five miles from New Lexington. In the month of September, 1870, in Mr. Powell's shoe-store, in Vienna, Moore and I had a conversation. The conversation commenced about the Townsend case, and he said that between the Townsend thieves and hog sharks he would be broken up. After this conversation, and before November, 1870, I heard a good deal of talk about Moore's property-circumstances, about his embarrasments arising from the hog contract and the Townsends' troubles. Some thought one way and some another, but a majority of those I heard speak about it thought that he could pay out if he would; but there was not so much talk before he made the deed of his lands to his father-in-law as there was after.

JAMES F. BOWERS.

(As to all the above evidence, except that of what Moore himself said to the witness, the counsel of Milner objected, as being only hearsay and rumor. The court overruled the objection, and the said counsel excepted.)

309 WM W. MOORE being duly sworn:

I live in Wayne Township, Clinton County, Ohio, about four miles from New Vienna and four miles from Abram A. Moore. In 1870 I lived about 2½ miles from Abram A. Moore. He is my brother. I am forty years old; am acquainted with John Milner, jr; have been for 7 or 8 years. In August of 1870 I had a little talk with Abram A. Moore on the road from Vienna to his house. He proposed to sell me his farm. I told him I did not want it. He said he was going to sell to some man to keep thieves from getting what he had for his children. That's about the amount was said. When talking about conveying his land away he said he believed he would borrow a thousand dollars, get J. N. Henry to go his security, and let him pay it. I am a creditor of Abram A. Moore.

WM W. MOORE.

SAMUEL J. MOORE being duly sworn:

I live in Wayne Township, Clinton County, Ohio, about four miles from Vienna; lived there in 1870, and then lived about a quarter of a mile from Abram A. Moore; he is my brother. I am 30 years
310 old. I have known John Milner, jr, about five years. In December, 1870, Abram A. Moore gave me a deed to take to Wilmington to get recorded, and to have the transfer made. He first spoke to

me about the deed, and my taking it to Wilmington to get it recorded, at my house, and said that it was at his house, and that his wife had it, and asked me to go to his house and get it and take it to Wilmington. He said it was a deed from his father-in-law, John Milner, j'r, to his (Abram A. Moore's) wife for the farm he (Moore) was living on at that time. I did go by and get the deed. I think I said to M'r's Moore, "I want that deed you want transferred and recorded;" and she brought me a paper which I supposed was the deed Abram had spoken to me about. I took it and went *passed* Vienna and asked Squire Charles C. Bowers if it was necessary to get the deed recorded immediately. He said any time inside of six months would do to record it. I took the deed back a' gave it to Abram's wife. I took it back on the same day I got it.

When Abram asked me to go and get the deed and take it to Wilmington and get it recorded, he said he had some business
311 that day down towards his father-in-law's, and could not go to Wilmington himself. He asked me to go to Wilmington for the one purpose of taking the deed. I had no business of my own there that day. I took the deed back to M'r's Moore when I learned it would do to record it any time within six months, because I had no other business to take me to Wilmington that day, and I thought Abram might take and get it recorded himself. I suppose when I returned the deed to M'r's Moore I told her what Bowers said, and that there was no hurry about it. It was in December, and if in December, it must have been along about the very first of the month. Either in October or November, 1870, I and my brother Thomas were going *passed* Abram A. Moore's house; Abram said he had a notion of going down to see his father-in-law to sign his farm over to him. He spoke of the hog contracts with Walker and Long. He said the price of pork was going down, and working against him. He said if he did not make some shift with his farm, the way prices of pork was going, these hog contracts would ruin him. The conversation was either in October or No-
312 vember, and if in November, I suppose it was early in November. Some time after, I can't state the time exactly, along in the winter some time, he told me he had deeded his farm away to his father-in-law, Milner, and said the conveyance could not be broken up. In the spring and summer of 1870, and in fact all the time after that for the next year or so, the general talk was that he was going to lose a good deal of money on the hog contracts; but it was thought that his farm would pay out. All the land of Abram A. Moore, owned in 1870, lies in one body, and he lived on it in 1870. In 1870 Abram was in possession of that farm and has been living there ever since. Peter Milner is working there on the farm and has been for a year and a half, but how or for whom I don't know. They say Peter Milner is a married man. He does not, I think, live in any house on the farm, unless he lives with Abram's. A family by the name of Terrill lives in a house on the farm. I don't know under what managements the Terrill family live there. I don't recollect whether they were there in 1870 or not. If there has been any change in the possession of the farm or any part of it
313 I don't know it, and I live within about a quarter of a mile of Abram's house.

(The counsel for Milner objects to the evidence of what was said about Abram A. Moore's property-circumstances by others than Abram himself as being hearsay and rumor merely, and to the evidence of what Abram A. Moore said to the witness after the 17th day of November, 1870, because it was after that date; but the register overruled the

objections and admitted the evidence—the latter-named evidence, however, for the purpose only for a reflecting on the intention of Abram A. Moore in making the deed to his father-in-law; and to these rulings the said counsel excepts.)

Examination-in-chief continued:

Some time after the time I had the deed in my possession from Milner to M'r's Moore, but I cannot state the time exactly, he, Abram A. Moore, offered to let me and one of my brothers, either Thomas or William, have the farm—the farm he had owned and was then in his possession of—if we would take it and pay off his debts. The offer was not simply that we should have the use of the farm, but should have the farm itself.

314 He did not say how or by whom it should be conveyed to us. I and he were alone when he made this offer. The conversation took place on or near the farm; somewhere in the neighborhood, at least. When he made this proposition to me was appointed a day to meet and see if we could come on terms about our taking the farm and paying the debts. The day appointed was about a week, probably a little over, after the day on which we made the appointment. The meeting was to be at his house. Before the day of meeting I went to Wilmington to search the records, to see if there was any other mortgage on the place other than that M'r Shepherd held. I found my brother Abe in the recorder's office, and he was getting a deed recorded which his father-in-law had made to him and the mortgage that he had made to his father-in-law. The deed, I understood from him, was for the same farm he had offered to my brother and me, and that the mortgage was on the same farm. I understood him to say it was for about nine thousand dollars. I made no search of the records; I did not think there was any use of making any search then.

315 (The counsel for Milner objects to the evidence of what Abram A. Moore said to the witness about letting the witness and his brother have the farm if they would pay his debts, because it was after the date of November 17th, 1870, but the register overruled the objection, and the said counsel excepted.)

Cross-examination for John Milner, j'r. by counsel:

Question. Was not this your brother Abram's first proposition, That if you or any of you or all of your brothers would pay, yourselves, what he owed your father and what he owed you, he would get M'r Milner to convey to you 100 acres of land?

Answer. My brother Abram did in a conversation which we had, after we had met in the recorder's office, talk something about M'r Milner releasing his mortgage as to a hundred of the farm, for which I should pay myself, brother Tom, and my father. This was before the day appointed for the meeting.

I went and saw Squire Kelly to see if the deed would stand against an attachment, (Walker and Long had then attached the land,)

316 and Squire Kelly said it would not. I declined to take the farm because the attachments were it, and because Milner's mortgage was upon it.

Question. How long before you met Moore in the recorder's office was it that to you, your brother Tom, and brother William to let you have the farm, if you would pay off his debts?

Answer. It was a very few days only, probably not more than a day or two.

Question. In your examination-in-chief you speak of a deed you re-

ceived in December, 1870, from M'r's Moore to take to Wilmington. Did you return her the same paper you got, and did you read it or know what paper it was?

Answer. I took her back the same paper she gave me; I did not read it, and I did not know it was a deed except from what Abram said, and from what she did when I asked her for the deed she wanted recorded. The deed or paper was not wrapped in paper nor inclosed in envelope. I didn't notice any printing on the back of it. I didn't examine the back or inside of it at all to see whether there was anything written
317 or printed on it. As to the time when I had this deed or paper in my possession, I can't state this: Cary T. Pope and Robert Johnson were at my house to try to buy my fat hogs; just a week from the day they were at my house I shipped my hogs to market, and I shipped them on either the 10th or 11th of December, 1870, and it was on the day Johnson and Pope were at my house that Abram A. Moore asked me to take the deed to Wilmington, and that I started and did with it as I have already stated. The deed or paper I have mentioned is all the paper I ever started to take to Wilmington for my brother Abram.

Question. Please state whether or not you are a creditor of Abram A. Moore, claiming a lien by judgment; and are you not at this time contesting the validity of John Milner, jr's mortgage?

Answer. Yes, sir.

SAMUEL J. MOORE.

THOMAS H. LONG, being duly sworn:

I live near Lexington, Highland Co., O.; I am 39 years of age.
318 In 1870 I lived near Lexington, Highland County, Ohio. It is about 3 or 3¼ miles from Lexington to where Abram A. Moore lives, and lived in 1870; I am acquainted with Moore, and have been about twelve years. I am acquainted with John Milner, j'r, and have been about 6 years; he lives about 4 miles from Lexington, Highland County, Ohio. I am a creditor of Abram A. Moore, and have proved my claim in bankruptcy against him. I claimed a lien by attachment on his real estate in Clinton County, and am one of the parties litigating the validity of Milner's alleged mortgage. In April (I think it was in April) I met M'r Milner in Leesburg, Highland County, Ohio. I said to him, "How about the deeding of that farm, (Abram A. Moore's?) I understand you have deeded it back to Moore's wife?" He said that he had deeded it back to her, and he had a motive in doing so. I think that was about all the conversation that passed. He did not tell me what his motives were. The conversation was in the street. As early as June, 1870, the price of pork and bacon began to decline, and then and after, in July and August,
319 1870, the rumor was, that Abram A. Moore had a good many contracts for the purchase of hogs, made the year before, for hogs to be delivered in the fall of 1870, and that he would lose largely on them, and that in view of these probable losses, together with the Townsend difficulty and suit for damages, he was in failing circumstances. This was the general impression in the neighborhood of Leesburg and Lexington, in Highland County, Ohio. About two miles from Lexington, John Milner lived there, (spring & summer of 1870,) within about two miles from Leesburg. M'r John Milner has now and in 1870 had a farm in Fairfield Township, Highland County, Ohio, about two miles from Leesburg, which the duplicate in the auditor's office shows to contain one hundred and forty acres. It is put down on the duplicate at the value of $4,000.00 and something, and his personal

property in 1870 was put down on the same duplicate at $900.00; I think personal and real together, at a little over $5,000.00. On the ordinary terms of payment, I should think the farm worth 55 dollars per acre. I never knew M'r Milner to any other land in the
320 State than this. The duplicate shows no credits of Milner for taxation. M'r Milner's business for the six years I have known him has been the cultivation of the farm I have mentioned. I believe he burnt a brick-kiln on his farm; I understood he moulded the brick as a brick-moulder. He has not been since I knew him a trader or speculator. He is a man of family.

(The counsel for Milner objected to the admission of the evidence of the report as to Moore's financial troubles and failing circumstances as being mere hearsay, and also objected to the evidence of the property circumstances of Milner as being incompetent, not because the duplicate was not produced, but because, as they claimed, any evidence of the property circumstances of Milner was incompetent on the issue on trial, unless the witness had the means of knowing the property circumstances, and would so state, and the examination of a tax-duplicate in one county is not evidence unless it is first shown that it contains all the property of said Milner.

But the register overrul'd the objections, and each of them; to which said counsel objected.)

321 Cross-examination by counsel for John Milner, jr:

About two weeks ago I made the examination of the record as to Milner's property. I have not examined the records of any other county. Examined no records in Highland County, except the tax-duplicate I have mentioned. The hog contracts that rumor said he (Moore) would lose heavily upon were, as I understood, made the winter of 1869 and 1870; perhaps in '69 some of them, perhaps in '70 some of them. My hog contract with Moore was made in 1870; perhaps in April, but I can't state the time. It may have been later at the time I made my hog contract with Moore. I considered him good up to the time I made my contract with him. I had heard only of his (Moore's) Townsend troubles, not of hog-contract difficulties. My contracts (I had two) with him w*as* made, I think, on the 25th day of May, 1870. Pork and bacon had not gone down then. When I made my contract with Moore I thought him good; but I had not then heard of his hog contracts with others. I always thought he could pay his debts. In the
322 latter part of November or first of December, Moore and I had an informal arbitration. I had contracted 75 of the hogs. Moore didn't take them, and this informal arbitration was a few days after. I had heard Moore had conveyed the land to Milner; Jonathan Wright, A. S. Amberg, and Asa Higgins were the arbitrators. They said Moore should pay me $600.00 and some dollars, to settle the contract. Another 100 hogs were not yet due. I did not agree to take that, and Moore did not offer to pay it. The arbitration was not binding on either Moore or me. It was merely to see if we could agree. I did not agree to that. I would accept whatever the arbitrators should say Moore should pay. I don't know whether we stated to the arbitrators whether we would comply with their award or not.

Re-examined by counsel for assignee and for defendant' Walker and Long and Samuel J. Moore, who is said to be a brother of Abram:

I think the arbitrators ought to have awarded that Moore should pay me about $1,300.00. I sued Moore on the contract and recovered judgement for $1,200.00 in the court of common pleas for Clinton County.

Ohio. I have proven that judgement in bankruptcy against
323 Moore. The judgement for twelve hundred dollars was rendered on a verdict for that sum, rendered by consent of Moore by his counsel. Major Higgins, one of the arbitrators, is about fifty years of age, married. The other men in mature life. Major Higgins is about 5 feet 10½ inches; horse-inspector in the late war; I suppose on the Union side.

T. H. LONG.

ELY P. JOHNSON, being duly sworn:

I live in Leesburg, Highland County, Ohio; lived there in the year 1872. I was a notary public. I knew John Milner and Abram A. Moore. About the 10th to 12th of January, 1872, John Milner came to my house about 1 o'clock a. m.; I think it was after midnight; I believe he waked me up and said he wanted me to do some writing for him officially; he said he wanted me to write a deed from him and his wife to Abram A. Moore for some land in Clinton County, and also a mortgage from Abram A. Moore and wife to himself. I wrote the papers
that night; it was, I think, after 1 o'clock; I commenced writing
324 them and got done a little before daylight; it was pretty near daylight when I got done; Moore was present when the papers were being written; they had their wives with them; M'r Moore was there when I was writing the papers; M'r's Milner was in town at some house, as I understood it, though she did not come to where the papers were written until she was needed to sign the deed.

The papers, both the deed and mortgage, were signed and acknowle'ged before daylight. Ruel Beeson, esq., was present and acting, I suppose, as attorney for M'r Milner. M'r Beeson came soon after M'r Milner did. I don't remember of writing any note or notes; if I did, it has escaped my memory. Either Moore or Milner told me what consideration to put in the deed. They, or one of them, told me what sum to insert in the condition of the mortgage as that which it was given to secure. I put in the sum, respectively, they told me to put in. I witnessed the execution of both papers, and so also did Ruel Beeson.
325 The deed was a quit-claim deed. I wrote the whole of the myself. The description of land inserted in the deed and mortgage I took from a deed from Abram A. Moore and wife to John Milner, j'r, which was produced for that purpose.

Cross-examination by counsel for John Milner, j'r:

I didn't remember of writing any note, but the note produced and shown me is in my handwriting, and I must have written it; and if I did, I wrote it that night—the night I wrote the deed and mortgage.

The note shown me is in the following words and figures:

"$8,295.89. JANUARY 19TH, 1872.

"On or before the 25th day of December next, for value received, I promise to pay eight thousand two hundred and ninety-five dollars and eighty-nine cents, with 6 per interest from date, to the order of John Milner, j'r.

"ABRAM A. MOORE.

"This note is secured by mortgage & stamped."

I cannot explain the seeming change in the date of the note. I see that *that* the deed I wrote bears the date of 19th of January, A. D. 1872;
and I must have written it on the morning of the 19th, 1872,
326 before daylight, and I was mistaken in saying it was from the 10th

to the 12th of January, 1872. I wrote two mortgages; one when I wrote the deed, on the morning of the same day; the other, the evening of the 20th, some time between dark and nine o'clock, at M'r Moore's house, in Clinton County, and took the acknowledgement in Highland County, by the light of a lantern, Moore and wife having come from their home in Clinton County across the line into Highland County at my suggestion, (bringing a witness with them for that purpose,) M'r Milner having taken me up there for that purpose. The consideration which was intended to be inserted in the granting part of the mortgage-deed I first wrote had, by inadvertency, been omitted, and the mortgage had been taken away by M'r Moore before the omission had been discovered, and had by him been taken to Wilmington and delivered for record, and, as I understood, it had been recorded. From this, I understood, arose the necessity of getting up a new mortgage.

When I wrote the first mortgage, neither Moore nor Milner, I
327 think, told me what sum to insert as the consideration for the conveyance. They both forgot it, I think. We all forgot it. When I commenced writing the mortgage, having first written the deed and inquired what consideration to insert in the mortgage, Milner said he would have to wait til' Moore came and he and Moore would have to make some calculations. And he and Moore went out of the room in which I was writing on the porch, and I went on writing a blank for the consideration; when they returned, one of them told me what the mortgage was to be given to secure, and this was inserted in the conditions of the mortgage. But by inadvertancies no sum was inserted in the blank left for the consideration. I got the consideration inserted in the second mortgage by adding together the sums mentioned in the condition of that mortgage; which are the same sum substantially mentioned in the condition of the first mortgage, the difference being only sixty cents.

Question. Was the note for eight thousand two hundred and ninety-five dollars and eighty-nine cents written by you for Moore to John Milner, j'r, intended to include any of the liabilities of John Milner, j'r, as security for Moore?

328 (The counsel for the assignee and for the defendants Long and Walker objected to the question as incompetent, calling, as it does, not for what was done, but for what may have been intended by persons whose interest could not know, and as seeking to vary the terms of the written conditions of the mortgage. But the register overruled the objection and permitted the question to be put; to which ruling of the register the said counsel excepted.)

Answer. I can't say positively that I know, but I don't think it was intended to include any of the other creditors described in the mortgage. I don't know what the note for $8,295.89 was given for at all. I don't remember that either of the parties told me what the consideration for it was. Mr. Beeson was present while I was writing the deed and mortgage, and read off to me the field notes from the other deed.

Re-examined:

The certified copy of a mortgage shown me now is, I believe, a correct copy of the mortgage I first wrote as above in my testimony stated, unless there is an error in copying the date of the acknowl-
329 edgement. If the date is correctly copied from the mortgage as written by me, I cannot explain the discrepancy. I attach hereto the said certified copy, marked "A," and make it a part of this my deposition.

E. P. JOHNSON.

JOHN C. GREGG, being duly sworn:

I live in Hillsboro', Highland County, Ohio, and did in 1870. I am fifty years of age. In 1870 I was engaged in building two bridges near Leesburg, in Highland County, Ohio, and one about half-way between Lexington in said county and Leesburg, and one about half mile west of Lexington. I commenced work on the bridge near Leesburg on the 25th day of August, 1870. I was in Leesburg superintending the work the larger portion of the time until the 20th of September. I worked some six or eight hands that I took there with me. During the time I was at Leesburg, before the 20th day of September, I heard persons about the hotel where I boarded in Leesburg talking about the troubles that A. A. Moore had got into; that he was involved in prosecutions and suits arising from a charge made against him of an assault
330 to commit a rape, and some hog contracts made some time before on which he was likely to lose money, as the price of pork and bacon had gone down. Some thought that he would be broken up, others that he would not. I also heard subsequently the same conversation at the bridge I was building between my hands and the persons in the neighborhood. These conversations I heard more than once from the time I went there until the 20th of September; two or three times at the hotel and once at the bridge.

(Counsel for John Milner, j'r, objected to the evidence of John C. Gregg as incompetent because the same is rumor and hearsay. Said objection was overruled by the register; to which said John Milner, j'r, by his counsel, excepts.)

DANIEL MURPHY, being duly sworn:

I am auditor of Highland County, Ohio; I have been such since the first of March, 1869. I am acquainted with John Milner, j'r. The personal property of Mr. Milner for the year 1869 was returned at the value of $1,849. The property so returned and valued was:
331 Horses, $520.00; cattle, $260.00; sheep, $331.00; hogs, $268.00; wagons and carriage, $120.00; other articles of tangible property, $225.00; one watch, $15.00; money, $100.00; one dog, $5.00. No credits were returned. In 1870, for that year, he returned personal property as follows: Horses at $410.00; cattle, $335.00; hogs, $130.00; carriage, $115.00; other articles of tangible property, $459.00; one dog, $5.00. Total, 1,454.00. No credits; no money returned.

In 1871, for that year, he returned personal property as follows: Horses at $500.00; cattle, $184.00; hogs, $110.00; carriage, $100.00; other tangible property not included in foregoing, $380.00; one watch, 35.00; credits and book accounts, 885.00; one dog, 3.00; total, 2,197.00. In 1872, for that year, he returned personal property as follows: Horses at $250.00; cattle, $195.00; hogs, $81.00; carriage, $75.00; other tangible articles, not included in the foregoing, $295.00; value of credits, book accounts, &c., 375; one dog, not valued; total, $1,271.00. No moneys was returned. In 1873, for that year, he returned personal property as follows: Horses, $300.00; cattle, $110.00; hogs, $251.00; carriage, 90.00; other tangible—

332 *Tax-notice for* 1872.

To :

You are notified to make out and hold in readiness for me a statement in the following form of all personal property, moneys, credits, over and above your indebtedness, investments in bonds, stocks, joint-stock com

panies, or otherwise in your possession or under your control as owner or holder, or as husband, parent, guardian, trustee, executor, administrator, receiver, accounting-officer, agent, attorney, or factor, on the day preceding the second Monday of April, 1873. You will also be prepared to furnish the statistics of crops, &c., indicated by the schedule on the last two pages of this notice.

J. ADAMS, *Assessor.*

Dated , 1873.

Statement of personal property, moneys, credits, &c., subject to taxation in Highland County, for the year 1873, *belonging to John Milner, and listed by J. Milner.*

	Number.	Value. Dollars.
1. Horses	3	250
2. Cattle	8	195
3. Mules and asses		
4. Sheep		
5. Hogs	18	81
6. Pleasure-carriages, wagons, &c	2	75
7. Value of household goods and furniture of every kind, gold and silver plate, china ware, jewelry, books, farming-utensils, grain, wool, agricultural products of every kind, lumber, coal, wood, stone, steamboats, canal-boats, (or shares in such boats,) and all other articles of personal property not included in any of the foregoing or subsequent items of this statement		295
Total value of the first seven items		$896

	Number.
8. Gold and silver watches	
9. Piano-fortes	
10. Monthly average value of all goods and merchandise owned or held by me during the year, or part thereof, ending the day preceding the 2d Monday of April, 1873	
11. Monthly average value "of all articles purchased, received, or otherwise held by me, for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining," during the year or part thereof ending the day preceding the 2d Monday of April, 1873	
12. Value of all articles on hand the day preceding the 2d Monday of April, 1873, which have been by me manufactured or changed in any way, either by combination, rectifying, refining, or adding thereto, one year or more previous to that day, and of all tools, implements, engines, and machinery used or designed to be used in manufacturing, except such as are appraised as part of the real estate	
13. Monthly average value of moneys, credits, or other personal property that has been converted into non-taxable bonds or other securities of the United States, or of this State, during the year or part thereof, ending the day preceding the 2d Monday of April, 1873	
14. Value of all moneys, in possession or on deposit, subject to draft on demand, with banks or others	

15. Value of all credits, after deducting bona-fide debts. (But debts cannot be deducted from moneys or the value of anything but credits; nor can debts created by investments, as in No. 13 above, be deducted from the value of said credits.). 375

16. Value of investments in the capital stock of any bank, (other than national banks,) corporation, or company out of this State; and in the bonds, securities, or other evidence of the indebtedness of any State or foreign government or bank, railroad, or other company, corporation, or association, or city, town, township, county, or village, in this or any other country .....

Number.

17. Dogs, (number must be sworn to; value must be stated but need not be sworn to) 1

Total value of all the items.....$1,271

☞ If the person required by law to list refuses or neglects to swear to the number and value of the property embraced in the first seven items, or the correctness of the number, if exhibited, or refuses or neglects to list and swear to the number and value of the whole or of any of the other items in the list, when requested to do so by the assessor, the assessor will then make the return from his own knowledge or from information of others, and will enter on the margin of the list "Refused to list," or "Refused to swear," as the case may be; to which return the auditor will add 50 per cent. as penalty.

THE STATE OF OHIO, *Highland County, ss:*

I, (*a*) John Milner, do solemnly (*b*) affirm that to the best of my knowledge and belief I have listed or exhibited to the assessor all the personal property, moneys, credits, over and above my indebtedness, investments in bonds, stocks, joint-stock companies, or otherwise in my possession or under my control as owner or holder, or as husband, parent, guardian, trustee, executor, administrator, receiver, accounting-officer, agent, attorney, or factor, on the day preceding the second Monday of April, 1873, which are subject to taxation under the laws of this State.

JOHN MILNER, J'R.

Sworn to and subscribed before me this day of , 1873.

J. AD'MS, *Assessor.*

333 *Rules for valuing personal property.*

I. The ninth section of the general tax-law of April 5, 1859, declares: "Personal property of every description shall be valued at the usual selling-price of similar property at the time of listing, and at the place where the same may then be, and if there be no usual selling-price known to the person whose duty it shall be to fix a value thereon, then at such price as it is believed could be obtained therefor in money at such time and place. Investments in bonds, stocks, joint-stock companies, or otherwise, shall be valued at the true value thereof in money." Money, whether in possession or on deposit in banks, or with persons, subject to draft on demand, shall be entered in the statement at the true value thereof. The balance of all credits, (after deducting the legal

(*a*) This blank must be filled with the name of the person making the affidavit
(*b*) This blank must be filled with the word "swear" or "affirm."

bona-fide indebtedness of the person listing,) payable either in money, property of any kind, labor, or service, shall be estimated, in making up the statement, at its true value, which is the amount that can be collected. Annuities, or moneys receivable at stated periods, shall be valued at the price which the person listing the same believes them to be worth.

II. Every individual may hold personal property not exceeding fifty dollars in value exempt from taxation; but all above that amount must be returned to the assessor. Every guardian is entitled to this exemption in behalf of his minor ward. But in families this applies only to the head of the famly, unless the other members own separate property independent of such head.

III. The necessary wearing-apparel, and all articles of food provided for the present use and support of an individual or family, are not to be regarded as objects of taxation. (This is limited to provisions for the individual or family, and does not include food for cattle or stock.)

IV. Merchants must include in their statements the average value of their goods and merchandise, and manufacturers the average value of the raw material used and on hand in the manufactured and unmanufactured articles. It is the average of the property on hand during the past year, and not the value of the capital employed, that must be returned. And the value of all manufactured articles on hand one year or more, with the value of tools, machinery, &c., must be returned by manufacturers as a separate item.

V. All personal property upon farms, and merchants' and manufacturers' stock, must be returned for taxation and taxed in the township and town in which they are situated. But moneys and credits must be entered for taxation in the township and town in which the person charged with the tax thereon resided at the time of the assessment.

VI. No person is required to include in his statement any share or portion of the capital stock or property of any company or corporation whose duty it is by law to list and return its capital and property for taxation in this State.

VII. A refusal to swear to the value of personal property included in the first seven items of the statement does not render it liable to the penalty of 50 per cent.; provided the owner thereof makes oath that he has fully and correctly exhibited said property to the assessor, and has made oath as to the other items of the statement.

VIII. Unless the value of the property listed is sworn to, the assessor shall not be governed by the amounts at which the owner may wish them returned; but shall fill the statement by placing opposite each kind of property such an amount as he believes to be its full value. Neither shall the assessor return any property at less than its true value in consideration of the fact that the penalty is to be added because its owner "refused to swear."

Form of oath or affirmation where there is no property exceeding fifty dollars in value.

I do solemnly that I do not own, hold, possess, or control any personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, which are by the laws of Ohio subject to taxation, or which I am by law required to list, in my own right, or as the holder thereof or otherwise.

Sworn to and subscribed before me this day of , 1873.

, *Assessor.*

Crops of 1872, *and other statistics.*

WHEAT—Number of acres sown.....
Number of bushels produced.....
RYE—Number of acres sown.....
Number of bushels produced.....
BUCKWHEAT—Number of acres sown.....
Number of bushels produced.....
OATS—Number of acres sown.....
Number of bushels produced.....
BARLEY—Number of acres sown.....
Number of bushels produced.....
CORN—Number of acres planted.....
Number of bushels produced.....
HAY—Number of acres in grass, (other than clover).....
Number of tons of hay produced.....
CLOVER—Number of acres grown.....
Number of tons of hay from clover.....
Number of bushels of seed.....
Number of acres plowed under for manure.....
FLAX—Number of acres sown.....
Number of bushels of seed.....
Number of pounds of fiber obtained.....
POTATOES—Number of acres planted.....
Number of bushels produced.....
TOBACCO—Number of acres planted.....
Number of pounds produced.....
BUTTER—Number of pounds made.....
CHEESE—Number of pounds made.....
SORGHUM—Number of acres planted.....
Number pounds of sugar.....
Number gallons of syrup.....
MAPLE-SUGAR AND SYRUP IN 1873—
Number pounds of sugar.....
Number gallons of syrup.....
GRAPES AND WINE—
Number of acres planted in the year 1872.....
Whole No. of acres in vineyards to close of year 1872.....
No. pounds of grapes gathered in the year 1872.....
No. of gallons of wine pressed in the year 1872.....
SWEET-POTATOES—Number of acres planted.....
Number of bushels produced.....
ORCHARDS—Number of acres occupied by orchards.....
No. of bushels of apples produced the previous year.....
" " peaches " " " " .....
" " pears " " " " .....
PASTURAGE—
Number of acres used for pasturage the previous year.....
UNCULTIVATED LAND—
No. of acres owned in the township the previous year.....
WOOL—Number of pounds shorn in 1872.....
DOGS—Number owned, young and old, male and female.....
SHEEP—Number killed by dogs during the past year.....
Value.....$
Number injured by dogs during the past year.....
Value.....$

BONDS, &c., exempt from taxation—
Amount now owned or held of all United States bonds, bonds of the State of Ohio, certificates of indebtedness, legal-tender notes, or other moneys that are exempt from taxation by any law of the United States or of this State...$

334 *Manufactures of iron, &c.*

Number of tons.

..... Pig-iron—cold-blast, native ore, smelted with charcoal.
..... " " hot " " " " " "
..... " " native or foreign ore, smelted with stone-coal.
..... Bar and nail rod.
..... Nails.
..... Hoop-iron.
..... Sheet-iron.
..... Boiler-iron.
..... Stoves and hollow-ware.
..... Spikes and railroad-chairs.
..... Car-wheels.
..... Railroad-iron.
..... All other castings.

Number.

..... Locomotives built.
..... Steam-engines constructed.
..... Steam-boilers made.
..... Sugar-mills made.
..... Portable saw-mills made.
..... Portable saw-mills in use.
..... Reaping-machines manufactured.
..... Mowing " "
..... Threshing " "
..... Plows manufactured.

Boats and barges built upon the Ohio River and its tributaries.

Value.

..... Steamboats..... .....
..... Flatboats..... ....
..... Barges..... .....

Boats and sail-vessels built upon Lake Erie and its tributaries within this State.

..... Steamboats..... .....
..... Sail-vessels..... .....
..... Canal-boats built and used in navigating canals.

Mines, miners, &c.

..... Bushels of stone-coal mined.
..... Persons engaged in mining stone-coal.
..... Tons of iron-ore mined.
..... Persons engaged in mining iron-ore.
..... Salt-furnaces.

..... Bushels of salt manufactured.
..... Gallons of petroleum produced.
..... Barrels of lime made.
..... Barrels of water-cement.
..... Gallons of stone-ware made.

(Indorsed:) No. . Name, John Milner, j'r. Exhibit to deposition of Daniel Murphy.

335 *Tax-notice for* 1873

To :

You are notified to make out and hold in readiness for me a statement in the following form, of all personal property, moneys, credits, over and above your indebtedness, investments in bonds, stocks, joint-stock companies, or otherwise in your possession or under your control as owner or holder, or as husband, parent, guardian, trustee, executor, administrator, receiver, accounting-officer, agent, attorney, or factor, on the day preceding the second Monday of April, 1873. You will also be prepared to furnish the statistics of crops, &c., indicated by the schedule on the last two pages of this notice.

A. BONNER, *Assessor.*

Dated April 21, 1873.

Statement of personal property, moneys, credits, &c., subject to taxation in Highland County, for the year 1873, *belonging to John Milner, and listed by John Milner.*

	Number.	Value. Dollars.
1. Horses	3	
2. Cattle	6	300 00
3. Mules and asses		110
4. Sheep		251 00
5. Hogs	75	
6. Pleasure-carriages, wagons, &c	2	90 00
7. Value of household goods and furniture of every kind, gold and silver plate, china-ware, jewelry, books, farming-utensils, grain, wool, agricultural products of every kind, lumber, coal, wood, stone, steamboats, canal-boats, (or shares in such boats,) and all other articles of personal property not included in any of the foregoing or subsequent items of this statement		200 00
Total value of the first seven items		$951 00

	Number.	
8. Gold and silver watches	1	12
9. Piano-fortes		
10. Monthly average value of all goods and merchandise owned or held by me during the year, or part thereof, ending the day preceding the 2d Monday of April, 1873		
11. Monthly average value "of all articles purchased, received, or otherwise held by me, for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining," during the year, or part thereof, ending the day preceding the 2d Monday of April, 1873		

12. Value of all articles on hand the day preceding the 2d Monday of April, 1873, which have been by me manufactured or changed in any way, either by combination, rectifying, refining, or adding thereto, one year or more previous to that day, and of all tools, implements, engines, and machinery used or designed to be used in manufacturing, except such as are appraised as part of the real estate.....
13. Monthly average value of moneys, credits, or other personal property that has been converted into non-taxable bonds, or other securities of the United States or of this State, during the year, or part thereof, ending the day preceding the 2d Monday of April, 1873.....
14. Value of all moneys, in possession or on deposit, subject to draft on demand, with banks or others .....
15. Value of all credits, after deducting bona-fide debts. (But debts cannot be deducted from moneys or the value of any thing but credits; nor can debts created by investments, as in No. 13 above, be deducted from the value of said credits.....
16. Value of investments in the capital stock of any bank, (other than national banks,) corporation, or company out of this State; and in the bonds, securities, or other evidence of the indebtedness of any State or foreign government, or bank, railroad, or other company, corporation, or association, or city, town, township, county, or village, in this or any other country .....

	Number.
17. Dogs, (number must be sworn to; value must be stated but need not be sworn to).....	1
Total value of all the items	$963

☞ If the person required by law to list refuses or neglects to swear to the number and value of the property embraced in the first seven items, or the correctness of the number, if exhibited, or refuses or neglects to list and swear to the number and value of the whole or of any of the other items in the list, when requested to do so by the assessor, the assessor will then make the return from his own knowledge, or from information of others, and will enter on the margin of the list, "Refused to list" or "Refused to swear," as the case may be; to which return the auditor will add 50 per cent. as penalty.

THE STATE OF OHIO, *Highland County, ss:*

I, (*a*) John Milner, do solemnly (*b*) affirm that, to the best of my knowledge and belief, I have listed or exhibited to the assessor all the personal property, moneys, credits, over and above my indebtedness, investments in bonds, stocks, joint-stock companies, or otherwise in my possession or under my control as owner or holder, or as husband, parent, guardian, trustee, executor, administrator, receiver, accounting-officer, agent, attorney, or factor, on the day preceding the second Monday of April, 1873, which are subject to taxation under the laws of this State.

JOHN MILNER, JR.

Sworn to and subscribed to before me this day of , 1873.

, *Assessor.*

(*a*) This blank must be filled with the name of the person making the affidavit.
(*b*) This blank must be filled with the word "swear" or "affirm."

336 *Rules for valuing personal property.*

I. The ninth section of the general tax-law of April 5, 1859, declares: "Personal property of every description shall be valued at the usual selling-price of similar property at the time of listing, and at the place where the same may then be, and if there be no usual selling-price known to the person whose duty it shall be to fix a value thereon, then at such price as it is believed could be obtained therefor in money at such time and place. Investments in bonds, stocks, joint-stock companies, or otherwise, shall be valued at the true value thereof in money." Money, whether in possession or on deposit in banks or with persons, subject to draft on demand, shall be entered in the statement at the true value thereof. The balance of all credits, (after deducting the legal bona-fide indebtedness of the person listing,) payable either in money, property of any kind, labor or service, shall be estimated, in making up the statement, at its true value, which is the amount that can be collected. Annuities, or moneys receivable at stated periods, shall be valued at the price which the person listing the same believes them to be worth.

II. Every individual may hold personal property not exceeding fifty dollars in value, exempt from taxation; but all above that amount must be returned to the assessor. Every guardian is entitled to this exemption in behalf of his minor ward. But in families, this applies only to the head of the family, unless the other members own separate property independent of such head.

III. The necessary wearing-apparel, and all articles of food provided for the present use and support of an individual or family, are not to be regarded as objects of taxation. (This is limited to provisions for the individual or family, and does not include food for cattle or stock.)

IV. Merchants must include in their statements the average value of their goods and merchandise, and manufacturers the average value of the raw material used and on hand in the manufactured and unmanufactured articles. It is the average of the property on hand during the past year, and not the value of the capital employed, that must be returned. And the value of all manufactured articles on hand one year or more, with the value of tools, machinery, &c., must be returned by manufacturers as a separate item.

V. All personal property upon farms, and merchants' and manufacturers' stock, must be returned for taxation, and taxed in the township and town in which they are situated. But moneys and credits must be entered for taxation in the township and town in which the person charged with the tax thereon resided at the time of the assessment.

VI. No person is required to include in his statement any share or portion of the capital stock or property of any company or corporation whose duty it is by law to list and return its capital and property for taxation in this State.

VII. A refusal to swear to the value of personal property included in the first seven items of the statement does not render it liable to the penalty of 50 per cent.; provided the owner thereof makes oath that he has fully and correctly exhibited said property to the assessor, and has made oath as to the other items of the statement.

VIII. Unless the value of the property listed is sworn to, the assessor shall not be governed by the amounts at which the owner may wish them returned; but shall fill the statement by placing opposite each kind of property such an amount as he believes to be its full value. Neither shall the assessor return any property at less than its true value, in consideration of the fact that the penalty is to be added, because its owner "refused to swear."

Form of oath or affirmation where there is no property exceeding fifty dollars in value.

I do solemnly that I do not own, hold, possess, or control any personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, which are by the laws of Ohio subject to taxation, or which I am by law required to list in my own right, or as the holder thereof, or otherwise.

Sworn to and subscribed before me this day of , 1873.

, *Assessor.*

Crops of 1872, *and other statistics.*

WHEAT—Number of acres sown .....
Number of bushels produced .....
RYE—Number of acres sown .....
Number of bushels produced .....
BUCKWHEAT—Number of acres sown .....
Number of bushels produced .....
OATS—Number of acres sown .....
Number of bushels produced .....
BARLEY—Number of acres sown .....
Number of bushels produced .....
CORN—Number of acres planted .....
Number of bushels produced .....
HAY—Number of acres in grass, (other than clover) .....
Number of tons of hay produced .....
CLOVER—Number of acres grown .....
Number of tons of hay from clover .....
Number of bushels of seed .....
Number of acres plowed under for manure .....
FLAX—Number of acres sown .....
Number of bushels of seed .....
Number of pounds of fiber obtained .....
POTATOES—Number of acres planted .....
Number of bushels produced .....
TOBACCO—Number of acres planted .....
Number of pounds produced .....
BUTTER—Number of pounds made .....
CHEESE—Number of pounds made .....
SORGHUM—Number of acres planted .....
Number pounds of sugar .....
Number gallons of syrup .....
MAPLE-SUGAR AND SYRUP IN 1873—
Number pounds of sugar .....
Number gallons of syrup .....
GRAPES AND WINE—
Number of acres planted in the year 1872 .....
Whole No. of acres in vineyards to close of year 1872 .....
No. pounds of grapes gathered in the year 1872 .....
No. of gallons of wine pressed in the year 1872 .....
SWEET-POTATOES—Number of acres planted .....
Number of bushels produced .....
ORCHARDS—Number of acres occupied by orchards .....
No. of bushels of apples produced the previous year .....
" " peaches " " " " .....
" " pears " " " " .....

PASTURAGE—
Number of acres used for pasturage the previous year.....
UNCULTIVATED LAND—
No. of acres owned in the township the previous year.....
WOOL—Number of pounds shorn in 1872 .....
DOGS—Number owned, young and old, male and female.....
SHEEP—Number killed by dogs during the past year. .....
Value.....$
Number injured by dogs during the past year.....
Value.....$
BONDS, &c., exempt from taxation—
Amount now owned or held, of all United States bonds, bonds of the State of Ohio, certificates of indebtedness, legal-tender notes, or other moneys that are exempt from taxation by any law of the United States or of this State.$

337 *Manufactures of iron, &c.*

Number of tons.

..... Pig-iron—cold-blast, native ore, smelted with charcoal.
..... " " hot " " " " " "
..... " " native or foreign ore, smelted with stone-coal.
..... Bar and nail rod.
..... Nails.
..... Hoop-iron.
..... Sheet-iron.
..... Boiler-iron.
..... Stoves and hollow ware.
..... Spikes and railroad-chairs.
..... Car-wheels.
..... Railroad-iron.
..... All other castings.

Number.

..... Locomotives built.
..... Steam-engines constructed.
..... Steam-boilers made.
..... Sugar-mills made.
..... Portable saw-mills made.
..... Portable saw-mills in use.
..... Reaping-machines manufactured.
..... Mowing " "
..... Threshing " "
..... Plows manufactured.

Boats and barges built upon the Ohio River and its tributaries.

Value.

..... Steamboats..... .....
..... Flatboats..... .....
..... Barges..... .....

Boats and sail-vessels built upon Lake Erie and its tributaries within this State.

..... Steamboats ....
..... Sail-vessels ....
..... Canal-boats built and used in navigating canals. .....

Mines, miners, &c.

..... Bushels of stone-coal mined.
..... Persons engaged in mining stone-coal.
..... Tons of iron-ore mined
..... Persons engaged in mining iron-ore.
..... Salt-furnaces.
..... Bushels of salt manufactured.
..... Gallons of petroleum produced.
..... Barrels of lime made.
..... Barrels of water-cement.
..... Gallons of stone-ware made.

(Indorsed:) No. . Name, John Milner, j'r. Exhibit to deposition of Daniel Murphy.

338 *Tax-notice for* 1873.

To :

You are notified to make out and hold in readiness for me a statement in the following form, of all personal property, moneys, credits, over and above your indebtedness, investments in bonds, stocks, joint-stock companies, or otherwise in your possession or under your control as owner or holder, or as husband, parent, guardian, trustee, executor, administrator, receiver, accounting officer, agent, attorney, or factor, on the day preceding the second Monday of April, 1873. You will also be prepared to furnish the statistics of crops, &c., indicated by the schedule on the last two pages of this notice.

, *Assessor.*

Dated , 1873.

Statement of personal property, moneys, credits, &c., subject to taxation in Hamilton County, for the year 1873, *belonging to* , *and listed by* .

	Number.	Value. Dollars.
1. Horses		
2. Cattle		
3. Mules and asses		
4. Sheep		
5. Hogs		
6. Pleasure carriages, wagons, &c		
7. Value of household goods and furniture of every kind, gold and silver plate, china-ware, jewelry, books, farming-utensils, grain, wool, agricultural products of every kind, lumber, coal, wood, stone, steamboats, canal-boats, (or shares in such boats,) and all other articles of personal property not included in any of the foregoing or subsequent items of this statement		
Total value of the first seven items		$
	Number.	
8. Gold and silver watches		
9. Piano-fortes		
10. Monthly average value of all goods and merchandise owned or held by me during the year, or part thereof, ending the day preceding the 2d Monday of April, 1873		

11. Monthly average value "of all articles purchased, received, or otherwise held by me, for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining," during the year, or part thereof, ending the day preceding the 2d Monday of April, 1873 .....
12. Value of all articles on hand the day preceding the 2d Monday of April, 1873, which have been by me manufactured or changed in any way, either by combination, rectifying, refining, or adding thereto, one year or more previous to that day, and of all tools, implements, engines, and machinery used or designed to be used in manufacturing, except such as are appraised as part of the real estate .....
13. Monthly average value of moneys, credits, or other personal property, that has been converted into non-taxable bonds, or other securities of the United States, or of this State, during the year, or part thereof, ending the day preceding the 2d Monday of April, 1873 .....
14. Value of all moneys, in possession or on deposit, subject to draft on demand, with banks or others.....
15. Value of all credits, after deducting bona-fide debts. (But debts cannot be deducted from moneys or the value of anything but credits; nor can debts created by investments, as in No. 13 above, be deducted from the value of said credits.....
16. Value of investments in the capital stock of any bank, (other than national banks,) corporation, or company out of this State; and in the bonds, securities, or other evidence of the indebtedness of any State, or foreign government, or bank, railroad, or other company, corporation, or association, or city, town, township, county, or village, in this or any other country .....

Number.

17. Dogs, (number must be sworn to; value must be stated but need not be sworn to).....

Total value of all the items .....$

☞ If the person required by law to list refuses or neglects to swear to the number and value of the property embraced in the first seven items, or the correctness of the number, if exhibited, or refuses or neglects to list and swear to the number and value of the whole, or of any of the other items in the list, when requested to do so by the assessor, the assessor will then make the return from his own knowledge, or from information of others, and will enter on the margin of the list, "Refused to list," or "Refused to swear," as the case may be; to which return the auditor will add 50 per cent. as penalty.

THE STATE OF OHIO, *Hamilton County, ss:*

I, (*a*) do solemnly (*b*) that to the best of my knowledge and belief, I have listed or exhibited to the assessor all the personal property, moneys, credits over and above my indebtedness, investments

(*a*) This blank must be filled with the name of the person making the affidavit.
(*b*) This blank must be filled with the word "swear" or "affirm."

in bonds, stocks, joint-stock companies, or otherwise in my possession or under my control as owner or holder, or as husband, parent, guardian, trustee, executor, administrator, receiver, accounting-officer, agent, attorney, or factor, on the day preceding the second Monday of April, 1873, which are subject to taxation under the laws of this State.

Sworn to and subscribed before me this day of , 1873.

, *Assessor.*

339 *Rules for valuing personal property.*

I. The ninth section of the general tax-law of April 5, 1859, declares: "Personal property of every description shall be valued at the usual selling-price of similar property at the time of listing and at the place where the same may then be, and if there be no usual selling-price known to the person whose duty it shall be to fix a value thereon, then at such price as it is believed could be obtained therefor in money at such time and place. Investments in bonds, stocks, joint-stock companies, or otherwise, shall be valued at the true value thereof in money." Money, whether in possession or on deposit in banks, or with persons, subject to draft on demand, shall be entered in the statement at the true value thereof. The balance of all credits, (after deducting the legal bona-fide indebtedness of the person listing,) payable either in money, property of any kind, labor, or service, shall be estimated, in making up the statement, at its true value, which is the amount that can be collected. Annuities, or moneys receivable at stated periods, shall be valued at the price which the person listing the same believes them to be worth.

II. Every individual may hold personal property, not exceeding fifty dollars in value, exempt from taxation; but all above that amount must be returned to the assessor. Every guardian is entitled to this exemption in behalf of his minor ward. But in families this applies only to the head of the family, unless the other members own separate property independent of such head.

III. The necessary wearing-apparel, and all articles of food provided for the present use and support of an individual or family, are not to be regarded as objects of taxation. (This is limited to provisions for the individual or family, and does not include food for cattle or stock.)

IV. Merchants must include in their statements the average value of their goods and merchandise, and manufacturers the average value of the raw material used and on hand in the manufactured and unmanufactured articles. It is the average of the property on hand during the past year, and not the value of the capital employed, that must be returned; and the value of all manufactured articles on hand one year or more, with the value of tools, machinery, &c., must be returned by manufacturers as a separate item.

V. All personal property upon farms, and merchants' and manufacturers' stock, must be returned for taxation and taxed in the township and town in which they are situated. But moneys and credits must be entered for taxation in the township and town in which the person charged with the tax thereon resided at the time of the assessment.

VI. No person is required to include in his statement any share or portion of the capital stock or property of any company or corporation whose duty it is by law to list and return its capital and property for taxation in this State.

VII. A refusal to swear to the value of personal property included in

the first seven items of the statement does not render it liable to the penalty of 50 per cent.; provided the owner thereof makes oath that he has fully and correctly exhibited said property to the assessor, and has made oath as to the other items of the statement.

VIII. Unless the value of the property listed is sworn to, the assessor shall not be governed by the amounts at which the owner may wish them returned, but shall fill the statement by placing opposite each kind of property such an amount as he believes to be its full value. Neither shall the assessor return any property at less than its true value in consideration of the fact that the penalty is to be added because its owner "refused to swear."

Form of oath or affirmation where there is no property exceeding fifty dollars in value.

I do solemnly that I do not own, hold, possess, or control any personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, which are by the laws of Ohio subject to taxation, or which I am by law required to list in my own right, or as the holder thereof, or otherwise.

Sworn to and subscribed before me this day of 1873.

, *Assessor.*

Crops of 1872, *and other statistics.*

WHEAT—Number of acres sown.....
Number of bushels produced.....
RYE—Number of acres sown.....
Number of bushels produced.....
BUCKWHEAT—Number of acres sown.....
Number of bushels produced.....
OATS—Number of acres sown.....
Number of bushels produced.....
BARLEY—Number of acres sown.....
Number of bushels produced.....
CORN—Number of acres planted.....
Number of bushels produced.....
HAY—Number of acres in grass, (other than clover).....
Number of tons of hay produced.....
CLOVER—Number of acres grown.....
Number of tons of hay from clover.....
Number of bushels of seed.....
Number of acres plowed under for manure.....
FLAX—Number of acres sown.....
Number of bushels of seed.....
Number of pounds of fiber obtained.....
POTATOES—Number of acres planted.....
Number of bushels produced.....
TOBACCO—Number of acres planted.....
Number of pounds produced.....
BUTTER—Number of pounds made.....
CHEESE—Number of pounds made.....
SORGHUM—Number of acres planted.....
Number pounds of sugar.....
Number gallons of syrup.....
MAPLE SUGAR AND SYRUP IN 1873—
Number pounds of sugar.....
Number gallons of syrup.....

GRAPES AND WINE—
Number of acres planted in the year 1872 .. ..
Whole No. of acres in vineyards to close of year 1872....
No. pounds of grapes gathered in the year 1872.....
No. of gallons of wine pressed in the year 1872.....
SWEET-POTATOES—Number of acres planted .....
Number of bushels produced .....
ORCHARDS—Number of acres occupied by orchards .....
No. of bushels of apples produced the previous year .....
" " peaches " " " " .....
" " pears " " " " .....
PASTURAGE—
Number of acres used for pasturage the previous year .....
UNCULTIVATED LAND—
No. of acres owned in the township the previous year.....
WOOL—Number of pounds shorn in 1872.....
DOGS—Number owned, young and old, male and female... ....
SHEEP—Number killed by dogs during the past year.....
Value.....$
Number injured by dogs during the past year.....
Value..... .....$
BONDS, &C., EXEMPT FROM TAXATION—
Amount now owned or held of all United States bonds, bonds of the State of Ohio, certificates of indebtedness, legal-tender notes, or other moneys, that are exempt from taxation by any law of the United States or of this State.. .....$

340 *Manufactures of iron, &c.*

Number of tons.

..... Pig-iron—cold blast, native ore, smelted with charcoal.
..... " " hot " " " " " "
..... " " native or foreign ore, smelted with stone-coal.
..... Bar and nail rod.
..... Nails.
..... Hoop-iron.
..... Sheet-iron.
..... Boiler-iron.
..... Stoves and hollow-ware.
..... Spikes and railroad-chairs.
..... Car-wheels.
..... Railroad-iron.
..... All other castings.

Number.

..... Locomotives built.
..... Steam-engines constructed.
..... Steam-boilers made.
..... Sugar-mills made.
..... Portable saw-mills made.
..... Portable saw-mills in use.
..... Reaping-machines manufactured.
..... Mowing " "
..... Threshing " "
..... Plows manufactured.

Boats and barges built upon the Ohio River and its tributaries.

Value.

..... Steamboats ....
..... Flatboats ....
..... Barges ....

Boats and sail-vessels built upon Lake Erie and its tributaries within this State.

..... Steamboats ....
..... Sail-vessels ....
..... Canal-boats built and used in navigating canals.

Mines, miners, &c.

..... Bushels of stone-coal mined.
..... Persons engaged in mining stone-coal.
..... Tons of iron-ore mined.
..... Persons engaged in mining iron-ore.
..... Salt-furnaces.
..... Bushels of salt manufactured.
..... Gallons of petroleum produced.
..... Barrels of lime made.
..... Barrels of water-cement.
..... Gallons of stone-ware made.

(Indorsed:) No . Name

341 property not included in foregoing, $200.00; watch, 12.00; total, $963.00. No credits, no money returned.

The land returned for taxation in and for 1870 as belonging to John Milner, j'r, was, as shown by the proper books in my office, 140 acres, lying in Fairfield Township, appraised at 5,364.00; as equalized by the township appraiser, at $5,920. I do not know of his owning any other land in the county. In 1871 he was assessed on the same land at the same value, and on no other. In 1872 he was assessed on the same land at the same value, and no other land. In 1870 he was assessed and taxed on 140 acres, at the valuation of $4,704.00, and on no other.

And thereupon it was argued by the parties to this controversy, and so announced to the register, that the tax duplicate for twenty years last past show that John Milner, j'r, was assessed and taxed on the aforesaid tract of land, and on no other, in Highland County.

(The counsel for John Milner, j'r, objects to the testimony given of the property circumstances of John Milner, j'r, for the reason that
342 it is confined to what he pays tax upon in Highland County, and it does not follow that he may not have lands in other counties or other States, and for the further reason that the tax duplicate does not show United States bonds, United States legal-tender notes, and other United States stocks and securities which are not taxable, and for the further reason that the tax duplicate does not show the real value of the real estate, and is unreliable, that the testimony be excluded; but the register overruled said objection and admitted the evidence; to which action of the register the counsel for John Milner, j'r, excepted, and these exceptions is entered.)

TUESDAY MORNING, *Aug.* 19*th*, 1873.

Depositions of witnesses in behalf of defendant John Milner, j'r.

JOSEPH WORTHINGTON, being duly sworn:

Mr. John Milner, j'r, paid me eleven hundred dollars April 13th, 1869, on a note dated December 25th, 1867, made by Abram A. Moore as principal and John Milner, j'r, and Samuel J. Moore, sureties, payable to me one year after date. The note called for twenty-two hun-
343 dred dollars. Abram A. Moore the money, and I paid the money to him. The following is a copy of said note:

"$2,200.00. EAST MONROE, *December* 25, 1867.

"One year after date, we, or either of us, promise to pay Joseph C. Worthington, or order, the sum of twenty-two hundred dollars, for value received of him."

Duly signed signatures cut off. Said note is endorsed as follows:

"April 13, 1869. Received on the written note eleven hundred dollars ($1,100.00) by the *l*and of John Milner, j'r.

"JOSEPH C. WORTHINGTON."

The note was afterwards renewed for the balance due thereon.

"EAST MONROE, *January* 1*st*, 1870.

"One year after date, we, or either of us, promise to pay Joseph C. Worthington, or order, the sum of twelve hundred and forty-eight dollars and fifty-eight cents, for value received of him.

(Signed) "ABRAM A. MOORE. [SEAL.]
"SAMUEL J. MOORE. [SEAL.]
"JOHN MILNER, J'R. [SEAL.]

Duly stamped, and endorsed as follows:

"March 20th, 1873. Received of John Milner, j'r, one hundred
344 and fifty-five dollars, the interest on the written note up to this date."

"May 19, 1873. Received on the within note thirteen hundred and eighty-three dollars and ninety-three cents, by John Milner, j'r. Principal and interest in full.

"JOSEPH C. WORTHINGTON."

Mr. John Milner, j'r, paid me the moneys stated in the credits thereon at the times therein stated. M'r Abram A. Moore was principal on said note, and Samuel J. Moore and John Milner, j'r, were sureties thereon. M'r John Milner, j'r, paid off the note and lifted it.

(*To* The second above-named note and all the evidence concerning payments upon the same were objected to as incompetent, because both the payments upon the same were after not only the making of the deed alleged by the assignee and other parties to be fraudulent, but also after the execution of the mortgage alleged by the same persons to be fraudulent, and because the said note is not one of those mentioned in the rejoinder of said John Milner, j'r, as being one of them on which he was surety, and as to which he, the said Milner, was by the said mortgage
345 indemnified. But the register overruled the objection and admitted said evidence, to which judgement and ruling of the register in overruling said objection and in admitting said evidence the said assignee and the said other parties contesting said deed and mortgage, by their counsel, exc pted.)

Cross-examination by counsel for the assignee and other parties contesting the deed and mortgage:

The first above-named note was delivered by me to John Milner at the time the last note was given, and I loaned the money to him. I am not certain whether I wrote the first note and gave it to Abram A. Moore or whether I gave it to M'r Milner. I wrote it and gave it to one or the other. Whether I gave it to one the other, and whichever I gave it to took it away, and it was afterwards brought back by Abram A. Moore, signed with three names, Moore being the first signature, and I paid the money on the note to Abram A. Moore. I do not know that any person was present when the second note was given, other than myself and Mr. Milner. Perhaps some of my family may
346 have been present. Abram A. Moore was not present. The second note was written by me at my house and given to John Milner, j'r, to get it signed, and taken away by him, and afterwards brought back by him with the three names to it, being the same that were to the first note, and Abram A. Moore's name was again first. When it was brought back by M'r Milner, Abram A. Moore was not with him. I received it and gave up to M'r Milner the first note. I don't think I saw M'r Milner cut the names off the first note. I don't know when they were cut off, nor by whom. When the second note was paid off, the interest was calculated at ten per cent. per annum. When the first note was given, Abram A. Moore agreed to pay ten per cent. on the borrowed money for which the first note was given. He borrowed only $2,000.00, and the additional two hundred were for the interest for one year. The agreement that ten per cent. should be paid on the old note after maturity must have been made by M'r Milner and myself, for I don't think I ever saw Moore, after he got the money, until after the second note was paid off. Interest was
347 paid on the second note at the rate of ten per centum per annum, and the agreement to pay that rate of interest must have been with me by M'r Milner, for, as I before said, I don't recollect of having seen Moore from the time he got the money until after the second note was paid off and delivered to M'r Milner. There was never any agreement made by M'r Milner nor by M'r Moore to pay a higher rate of interest on either of the notes than ten per cent. The second note was given for what remained due on the first, and interest at ten per cent., and included interest at the rate of ten per cent. per annum for the time the new note had to run.

JOSEPH C. WORTHINGTON.

DELILAH MILNER, being duly sworn:

I live in Fairfield Township, Highland County, Ohio, about a mile from John Milner, j'r; am a sister to John Milner, j'r. I loaned four hundred dollars to Abram A. Moore, probably four or five or six years ago; don't just remember the time. He gave me his note, with John Milner, j'r, security, due in twelve months, to the best of my recollection.

348 Moore renewed the note once, and took up the old and gave a new note, with John Milner, j'r, security. The first note was renewed two or three years, I believe, after it was given. I think the note now shown me is the one given me by Abram A. Moore, as principal, and John Milner, as security, in renewal of the first note; it reads as follows: "$503.88. On or before the 25th day of December, 1870, we or either of us promise to pay Delilah Milner or order five hundred and three dollars and eighty-

eight cents. December 25th, 1869." Signatures torn off. Stamped with thirty cents stamps, cancelled, A. A. M. John Milner, j'r, lifted the last note and gave me his own individual note for it, without any security. I believe he took up the Moore note at or near the time it became due. I do not remember the amount he accounted to me for on the note. When Milner to' up the Moore note he gave me his note for the amount of it, and also included in his note other moneys for which he, Milner, owed me at the time, to the best of my recollection. The Moore money was at 8 per cent., and so calculated.

349 Cross-examination by counsel for assignee and other parties contesting the said deed and mortgage:

When the first note was renewed Moore and Millner were both present, and I gave the first note to one or the other of them, but I don't remember to which. I think it was Christmas, 1871, that John Milner, j'r, gave me his own note in renewal of the second Moore note. It was due December 25th, 1872, and on that day, or about that day, John Milner, j'r, gave me his individual note in renewal of the said first individual note he gave me. The last-named note I still hold. It will not be due until next Christmas, December 25, 1873. Since I loaned Moore originally the five hundred dollars, neither Moore nor Milner has paid me any money on that original loan nor upon the interest upon it.

Re-examination:

Milner took up the second Moore note about the time it became due, I believe, but whether it was taken up then or a year after, which would be in 1871, I cannot state possibly.

Recross-examined:

I hold a note on my brother, John Milner, j'r, now, which I think will be due next Christmas, the 25th December, 1873. It has one year to run, that is, it was drawn payable in one year from its date. It
350 was given in renewal of another individual note which I had on him. This former individual note was due last Christmas, and at that time he gave me the note that I now hold. The first individual which my brother gave me ran from its before due, to the best of my recollection, (there my memory is not clear on the point one year.) This first individual note which my brother gave me was to renew the second note I held on him and Moore and for money which my brother individually owed me. This money which my brother individually owed me was borrowed money, which he had owed me probably five or six years, and on which he had been paying me interest at the rate of eight per cent. He borrowed originally from me $1,300.00, but he had made some payments, so that at the date of the renewal of the second Moore note he, my brother, owed me about one thousand dollars, perhaps a little more. (To the evidence as to how much John Milner owed the witness at the time of the renewal of the second Moore note, and as to how long he had owed it, and as to the rate of interest he
351 had been paying on it, the said John Milner, j'r, by his counsel, objects, as incompetent, because it was not within the perview, as they claimed, of their examination-in-chief, nor of their re-examination; but the court overruled the objection, and the said counsel excepted.)

Question. Has your brother, since he gave you his individual note in renewal of the second Moore note, and for what he then individually owed you, paid you anything on what he so individually owed?

Answer. He has not.

DELILAH MOORE.

ELI MILNER having been duly sworn:

I live in Fairfield Township, Highland County, Ohio, about three-quarters of a mile from John Milner, j'r. My age is sixty years past. John Milner, j'r, is my brother. I loaned Abram A. Moore money, and took his note, with John Milner, j'r, security, for the sum of two thousand dollars, which sum, included in the sum of money borrowed, together with the interest thereon till they would become due.

The note read as follows:

352 "$2,000.00. On or before the 25th Dec., 1870, we, or either of us, promise to pay Eli Milner or order two thousand dollars. Dec. 25th, 1869." Signatures taken off, except the word "Abram." Stamped with one dollar revenue-stamps, cancelled with the initials A. A. M. My impression is it was paid off at or about the time it became due, but do not know certainly as to the time. It was paid off by John Milner, j'r, and he took up the note when he paid it. The note was paid off in money.

Cross-examination by the counsel for the assignee and for others contesting the deed and mortgage:

Question. Was Abram A. Moore present when John Milner paid off the note?

Answer. No.

Question. Where were you when the note was paid off?

Answer. At my house. John was there, and paid it himself. I don't whether any calculation had to be made to ascertain the amount due upon the note at the time it was paid off. I can't say positively whether the note was paid off on Christmas day or some other day. It was at or about the time the note became due, some day near
353 the time it became due. I think I received on the note just two thousand dollars. It was paid off at or near the time it became due. If after it became due some time no computation of interest was made for that time. I don't recollect that there were any other business transactions between me and my brother John on the day the note was paid off.

Question. Did you at any time you have mentioned the note was paid off hold any other paper on your brother John? If so, was it overdue; if not, when did it become due? How much was it for? State fully.

(Objected to by counsel for Milner for alleged irrelevancy, and because, as alleged, not *written* perview of examination-in-chief.)

Answer. He is my brother; has been in the habit of borrowing money of me for a number of years, and at the time that note was paid off I may have held another note on him, and I may not. For the three years next before the 25th of December, 1870, my brother John's indebtedness to me for borrowed money would range, as I would guess, at from five hundred to a thousand dollars. By saying that his indebted-
354 ness to me for borrowed money would, as I would guess, during the three years next before the 25th day of December, 1870, from five hundred to a thousand dollars, I mean to say that he was during that time in the habit of borrowing money from me, generally in small sums, and generally on short time. He may have been during that period indebted to me sometimes in a thousand dollars, sometimes in five hundred, and perhaps sometimes in not more than twenty-five dollars. I am not able to say how much he owed me on the 25th day of December, 1870, for money thus borrowed. It is likely that he did owe me some on that day for money thus borrowed. My impression is that

I might have then had notes on him for from sixty to two hundred dollars.

Question. State as nearly as you can what sum your brother John owed you on the 25th December, 1870, for money which he had heretofore himself borrowed from you.

(Same objection, ruling, and exceptions as last before.)

Answer. I don't recollect how long before the 25th day of De-
355 cember, 1870, John had made me a payment on borrowed money. I don't recollect of his making me any payments within a year next before. I don't recollect of any definite payments of any definite sum within two years next before the 25th day of December, 1870; I do not recollect any payment within three years next before December 25th, 1870; I mean to say, and to be understood as saying, I do not recollect distinctly the time of making any payment or the amount of any particular payment, though I admit payments may have been made during the three years next before the 25th of December, 1870.

Question. When your brother John borrowed money from you, did you take his note for the loan?

Answer. I generally took his notes, not always.

Question. On the 25th day of December, 1870, how many notes did you hold on your brother John other than the Moore note?

(Same objection, same ruling, and same exceptions as before.)

Answer. I cannot tell you how many notes other than the Moore note I then held on my brother John.

Question. What business were you engaged in in December,
356 1870, and for one year next before?

Answer. Farming and loaning sums of money.

Question. How much money, as near as you can state it, had you on loan in December, 1870?

(Objected to; ruling and exceptions as before.)

Answer. This is a matter of guess, too; but I suppose it was over $10,000.

Question. What interest did your brother John pay you on moneys borrowed by him from you?

(Same objections, ruling, and exceptions as before.)

Answer. I have not been uniform in that matter with : sometimes he paid me one interest and sometimes another: I think he has paid me six per cent., and I think he has paid me ten.

Question. How long after the 25th December, 1870, did you loan your brother John money? How much, and how was it secured?

(Same objections, *to* ruling, and exceptions as before.)

Answer. I have several notes or due-bills from my brother John for borrowed money loaned him in 1871; probably some of the loans were made as early as January, 1871: I cannot state the dates accurately; probably the notes would amount to a thousand dollars. Nothing said
357 about interest in the notes or due-bills. I fixed that matter so that he or the law could decide it. There is no rate of interest mentioned.

ELI MILNER.

JOHN MILNER, j'r, being duly sworn, says:

I live in Fairfield Township, Highland County, Ohio. I am in my fifty-ninth year. Abram A. Moore is my son in-law. I am the John Milner, j'r, to whom Abram A. Moore and wife executed the mortgage in question in this suit. I claim to have purchased the first seven tracts of land, described in the petition in this case, from Abram A. Moore, and on the 17th day of November, A. D. 1870, Moore and wife executed to

me the deed for the same, but the bargain was made for the purchase a week or ten days before. The consideration was twenty-one thousand nine hundred dollars. I paid for it in the following manner: Moore owed me at the time of said purchase four thousand dollars, and the debt arose as follows: First, I paid eleven hundred dollars for him to Joseph C. Worthington on the 13th day of April, A. D. 1869, and
358 on that claim ten per cent. compounded interest from the 13th day of April, A. D. 1869, to the 25th day of December, 1870. That is, we counted interest on the eleven hundred dollars from the 13th day of April, 1869, to April 13th, 1870, at ten per cent., and on the amount of principal and interest we calculated interest from the 13th April, 1870, to December 25th, 1870. When the purchase was made nothing was to be paid until the 25th day of December, 1870. I do not remember the exact amount the Worthington money. I think it was in the neighborhood of twelve hundred and ninety dollars. I also assumed the payment, and did settle, the Delilah Milner note, spoken of in Delilah's testimony, five hundred and three dollars and eighty-eight cents. The note was for five hundred and three & $\frac{88}{100}$ dollars, dated December 25th, 1869, and became due December 25th, 1870, and made by Abram A. Moore, as principal, and myself, as surety. I also assumed to pay, and did pay, a note for two thousand dollars which Eli Milner held, dated December 25th, 1869, payable December, 1870, made by Abram A. Moore, as principal, and myself, as surety, which I paid near
359 the time it became due. Also Moore owed me sixty-five dollars on the pasture of some mules, and one hundred and forty dollars for money, with the interest, which in A. D. 1866 I had paid for him on a debt he owed James and Michael Fry for some corn he had purchased of them. My impression is, it was in the neighborhood of one hundred dollars cash I paid to Fry in 1866. The foregoing sums made up the said sum of four thousand dollars: for the balance of the purchase-money I executed and delivered to Abram A. Moore my two promissory notes, one for ten thousand dollars, due on the 25th day of December A. D. 1873, and the best of my recollection the note was executed and dated on the 18th day of November, 1870, and without interest; and the other note, for four thousand nine hundred dollars, dated and executed on the 18th day of November, A. D. 1870, and due on the 25th day of December, 1871, without interest, both the said notes payable to Abram A. Moore or order. I also assumed the payment of a mortgage for three thousand dollars, which Henry A. Shepherd held on the land, and
360 I took the land subject to the mortgage. The mortgage became due, I believe, in July 13th, 1871; but I am not positive of the time it became due; it might have been A. D. 1872. The mortgage was not on all of the land. My understanding it was on five of the tracts. I never paid the mortgage. I paid three hundred dollars on it. On the 26th day of July, 1871, I paid two hundred and forty dollars on it, and on the 30th of August, 1871, I paid sixty dollars on it, making three hundred dollars. I have Mr. Shepherd's receipts for these two payments, and they read as follows:

"JULY 26TH, 1871.

"Received of John Milner $240.00, to apply on the note of A. A. Moore of $3,000.00.

"HENRY A. SHEPHERD."

"Received, August 30th, 1871, of John Milner, the sum of sixty dollars.

"HENRY A. SHEPHERD."

My note to Abram A. Moore for ten thousand dollars I found in my brother Moses Milner' hands, and on the 19th day of January, A. D. 1871, or about that time, I made a payment on that note to Moses Milner, who then held the note of seventeen hundred dollars, and
361 lifted the note, and gave my note to my brother for the balance due on said Moses' note, and payable two years after date, with interest at the rate of eight per cent. per annum. I do not now remember the amount of the note to Moses. It was negotiable. At one time I paid one thousand and twenty dollars to Peter Milner on the said note I made to Moses. I cannot tell the time, but I think I paid it within the past year, last winter. I also paid Peter Milner on said note *note* made to Moses Milner the sum of six hundred dollars, some time last spring. Peter Milner held the note when I made these payments to him on it. The note for four thousand and nine hundred dollars remained, as I understand, in Abram A. Moore's hands til' I deed' the land back to him. I sold the land back to Moore, and conveyed it to him by a quit-claim deed, dated January 19th, 1872; and the reason for redeeding the land to Moore was, that I was not able, pecuniarily, to hold the land, and by reason of the attachments of C. M. Walker and Thomas H. Long having levied upon the lands, I couldn't sell it. I took a mort-
362 gage from Moore of the same date of the deed, but there was a mistake made in it by Eli Johnson, who wrote it for us, and to correct the mistake another was made, bearing date the 20th day of January, A. D. 1872. Moore was unable to pay me back the four thousand dollars of his indebtedness existing when I bought the farm of him, and he was unable to return to me my note to him for ten thousand dollars, or the money for it, but he gave up and destroyed my note to him, as he told me, for four thousand nine hundred dollars. I took from Moore a deed for some western land, at the consideration of six thousand dollars, which left due to me four thousand dollars on the ten-thousand-dollar note. During my ownership of the land I paid for Abram A. Moore to Samuel Acre eighty-five dollars on a note made by Abram A. Moore, as principal, and myself as surety, to Samuel J. Moore, or order, and which had been transferred to Acre. I had also paid during my ownership of the land ninety dollars and twenty-nine cents to National Bank
363 in Wilmington, on a note which Abram A. Moore, as principal, and I, as surety, had made to the bank for that amount. I had also, during the same time, paid O. B. Savage one hundred and twenty dollars and sixty-two cents, on a note held by Savage against Moore, as principal, and me, as surety. I have but one of these three last notes, and it read' as follows:

"$112.15.] HIGHLAND, OHIO, *Jan'y 31st*, '71.

"On or before the 25th day of December next, we, or either of us, promise to pay to the order of O. B. Savage one hundred and twelve and $\frac{15}{100}$ dollars, for value received, with 8 per cent. interest from date.

"ABRAM A. MOORE."

With one name torn off. For these several sums of his indebtedness to me I took Abram A. Moore's note for eight thousand two hundred and ninety-four dollars and eighty-nine cents as the amount due on the sale of said lands to said Abram A. Moore, and took his mortgage on the lands to secure the payment of the note. The Savage note, the Acre note, and the national bank note, were all delivered to Moore when he gave me his note and mortgage. The mortgage included the Acre, Savage, and national bank notes, which included in the note

364 from Moore to me for $8,295.89, but they are not mentioned separately, as the' went to make up the body of the note, and I hap before that time paid them off.

When I took the mortgage I was surety to John B. Moore and to Joseph C. Worthington for Abram A. Moore, and included in the mortgage as indemnity to secure me against those debts. The note to Joseph Worthington, referred to in the mortgage, reads as follows:

"EAST MONROE, *January 1st*, 1870.

"One year after date we, or either of us, promise to pay Joseph C. Worthington, or order, the sum of twelve hundred and forty-eight dollars and fifty-eight cents, for value received.

"ABRAM A. MOORE. [SEAL.]
"SAMUEL J. MOORE. [SEAL.]
"JOHN MILNER, JR. [SEAL.]

[Stamped with 65 cents. Stamps cancelled with initials A. A. M.]

The following credits are on said note:

"March 20th, 1872, rec'd of John Milner one hundred and fifty-five dollars, the interest on the within note up to this date.

"May 19, 1873, rec'd on the within note thirteen hundred and eighty-three dollars and ninety-three cents, by John Milner, the prin-
365 cipal and interest in full.

"JOSEPH C. WORTHINGTON."

I paid off said note as stated in the credits thereon. At the time of the making of said mortgage I was not surety for Moore to Worthington on any other note. This is not the I assumed to pay to Worthington when I purchased the farm of Moore. I did not assume the payment of any Worthington note. I did pay eleven hundred dollars to Worthington for Moore, which was included in the original four thousand dollar indebtedness of Moore to me, and that note of Worthington's on which said eleven hundred dollars was paid is not the note indemnified against in the mortgage, but the note last above copied is the one I am indemnified against in the mortgage. The reason the note is referred to in the mortgage as a note of hand given to Joseph C. Worthington for about twelve hundred dollars, dated about the 25th day of December, 1869, bearing ten per cent. interest from date, is because we had not the Worthington note then present, and did not know either its exact amount or date. The Worthington note was for money bor-
366 rowed by Moore from Worthington, and the present note is a renewal of the balance due on the original note to Worthington, on which original note I paid the eleven hundred dollars, as before stated. The note to John B. Moore named in the mortgage was made by Abram A. Moore, as principal, and myself, as surety. Moore brought the note to my house for me to sign. I signed it, and at that time no other names than Abram A. Moore's and mine were on the note. I don't know of any one else signing it. I do not remember the amount or date of the John B. Moore note. At the time of making the mortgage, according to Abram A. Moore's best recollection, the John B. Moore note has not been paid, nor any part of it, by me or any one else, that I know of. I was not surety for Abram A. Moore to John B. Moore on any but the one note when I took the mortgage, and it was intended to indemnify me by said mortgage against those liabilities of mine as Moore's surety to said John B. Moore.

Question by counsel for Milner. Explain what you mean by
367 language above, "The mortgage included the Acre, Savage, and national bank notes, which were included in the note from Moore to me for $8,295.89, but they are not mentioned specifically, as they went to make up the body of that note, and I had before that time paid them off."

Ans. I mean that the amount of the Savage, Acre, and national bank notes were included in the note of Moore to me for $8,295.89 as a part of the consideration money, and that the said note for $8,295.89 was included in the mortgage.

OCTOBER 20TH, 1873.

JOHN MILNER'S testimony continued:

I want to correct the statement heretofore made in my testimony about the note to John B. Moore named in the mortgage to me. I stated, as it appears in my written testimony, that Moore brought the note to my house for me to sign. I signed it, and at that time no other name than Abram A. Moore's and mine were on the note. When that testimony was given I was very sick, and did not say what I intended.

The correct statement is that Moore brought the note to me,
368 and met me on my farm away from the house, for me to sign; I did not go to the house, but authorized him to sign my name to the note; at that time no other name than Abram A. Moore was on the note. He went away with the note, and I understood from him that he got his wife (my daughter) to sign my name to the note, which was all right, and assented to by me. I don't know of any other names being to the note. I want further to state, as a reason for conveying the land back to Moore, and taking a mortgage from Moore to me, was the advice of my attorney, whom I consulted about my proper course after the levy of the attachment on the land. I intended when I bought the lands to sell them, and supposed I could do so on such terms as would enable me to meet my notes to Moore, and at the time I purchased the lands Moore promised me that he would settle and satisfy the claim of said C. M. Walker and Thomas H. Long. I advised him to compromise these claims and settle them. At that time he had

ample means, as I supposed, to pay them, and also be able to
369 pay all his debts. He, however, did not settle the Long and Walker claims, and when they sued out their attachments, it so complicated matters that I could not sell the land, and without selling it I could not meet the payments of the purchase money, and upon being advised by my lawyer that I had better sell the land back to Moore and take his mortgage for the amount he should be indebted to me, if I could get Moore to do it, I saw Moore, and at first he refused to do it. He wanted to get Sam Moore, W'm Moore, and Tom Moore, and his father to take part of the land in payment of their debt, as I had before told him that if they would take part of the land I would release it to them, and take a credit on my note for the amount; afterwards he came to me one evening about dark and said they would not take any of the lands, and he supposed they were about to institute proceedings to attach my notes or the lands both, and that he would take the lands back. We both then went to see Mr. Beeson, then my attorney, and he

directed us to go Eli P. Johnson, a notary public, and let him
370 draw up the papers; by this time it was considerably after night. We went to Johnson's, and he drew up the deed from me to Moore, and the deed from Moore to me for the western land which he had purchased with one of my notes and the mortgage from Moore and

wife to me. Mr. Beeson was present when Johnson commenced writing the mortgage. Moore had gone after his wife, and as I did not know just what arrangement he would make about my $10,000.00 note which he had traded off, the consideration was left blank. When Moore came back, that matter was arranged by my agreeing to take the western land at $6,000.00, and the balance of the $10,000.00 to be included in the mortgage; but the blank for the consideration was forgotten to be filled. By the time all the writings and notes were filled up and signed, it was well on towards morning.

At this time I agreed with Moore that if he could make more than $6,000.00 out of the western lands within six months I would let him have it back at $6,000.00, and I am still willing to let the assignee have it at that amount. My $4,900.00 note to Moore for the land was not paid when it became due, because by reason of said attachment my said attorney advised me not to pay it, but to
371 deed the lands back to Moore if I could get him to take them, and for me to take his mortgage for the difference he would owe me.

(So much of the above as includes the statements and advice of counsel objected to by the attorney for the assignee. The objection was overruled by the register, and testimony admitted, in which action of the register the assignee, by his counsel, excepted.)

Question. At the time you received the deed from Abram A. Moore of November 17th, 1870, what was your knowledge of his financial circumstances?

Answer. I believed him to be in embarrassed circumstances. He told me, and I believed, that twelve thousand dollars would pay his debts, exclusive of the Long and Walker claim and the Townsend suit. The Townsend suit I did not think could amount to much, and the Long and Walker claim I thought he would and could compromise, and I thought he had means enough outside the lands to pay them. He had a considerable amount of live stock and other personal property. I say boldly and firmly that I never had any intention whatever to de-
372 fraud or in any manner to hinder and delay the creditors of Abram A. Moore in the collection of their claims, but, on the other hand, I acted in the utmost good faith in the whole matter, and ready and willing to do all I could to aid him in payment of his debts. I expected to pay every dollar of the purchase-money, and also expected that so much of it as was necessary would be honestly and promptly applied to the payment of his debts.

Question. State whether there was any arrangement or understanding between you and Moore at the time you purchased said lands of him, or before, to deed said lands back to him or his wife at any time?

Answer. There was no such arrangement or understanding.

Question. Explain the conversation between you and Thomas H. Long to which he refers to in his testimony, in which he says that you said to him you had deed' the lands back to M'r's Moore, and that you had a motive in so doing?

Answer. I met Thomas H. Long in Leesburg, in April, 1871. In the conversation he said to me, "I understand you have deeded the lands to M'r's Moore." I said, in reply, "I don't deny." There was
373 nothing said in that conversation by me about a motive. I signed a deed, dated Nov. 19th, 1870, to M'r's Moore, for said lands, and on the same date signed one for other lands to my son, George Milner. Neither deeds was delivered, nor were they intended to be, unless it should become necessary for after purposes. At that time I was not

married, but was about to be, and to satisfy my family these deeds were drawn up. Arrangements were made satisfactory without delivering the deeds, and the deeds have never been delivered nor been out of my possession or control, and are still in my possession. The deed to M'r's Moore never was delivered to Samuel Moore to be taken to the recorder for record. Moore never had it. The deeds were not destroyed, for the reason that I thought it would be best to preserve them, so that when the question came up to be tried I could show both deeds, and I did not want to appear to have suppressed any evidence, and that as the same motive prompted the deed to M'r's Moore as the one to my son George, I supposed it would be some advantage to me to show both deeds. After I purchased the land, I left Abram A. Moore on it to manage it as my agent, until I could sell it.

374 I did not expect to occupy the land, but expected to sell it. In the mean time some one had to have charge of it, and therefore I kept Moore there, and when the attachments were levied I was prevented from selling it, and he therefore remained, and in the spring after the levy of the attachments I agreed to give him five hundred dollars ($500.00) to cultivate one hundred acres in corn during 1871. The crop of 1871 I applied to my own use. My only motive in buying the lands was, that Moore was indebted to me, and I thought I could sell the land and make the money, and had not the attachments been levied on it I could easily have done so. I had no other means of paying for the lands in the time fixed for the payments than by selling them.

I wish further to state that the six-hundred-dollar note which Abram A. Moore held on Peter Milner, Peter Milner had given him for the rent of land for 1872. Abram A. Moore turned this note over to me in part payment for the proceeds of the farm in 1871, which he had appro-

375 priated and sold. I accepted the note from Abram A. Moore in part payment for said proceeds, and turned it over to Peter Milner, who took it in March 1st, 1873, as a credit on the $8,300.00 note held by Peter to me.

JOHN MILNER, J'R.

MOSES MILNER, having been duly sworn, says:

Question by counsel for John Milner, j'r. State whether or not you obtained a note on John Milner, j'r, from Abram A. Moore. If so, state when and how you obtained it; what credits, if any, were on it; when you got it; what amount of money did it call for; its date; when and to whom payable; what moneys, if any, were paid on it to you, and what became of the note.

(The counsel for the assignee and for the defendants, Walker and Long, objected to the question as seeking and tending to elicit evidence of facts themselves wholly immaterial and irrelevant. The court overruled the objection and permitted the question to be answered; to which judgement and ruling of the register the said counsel excepted.)

376 Answer. Between the 25th of November and middle of December, A. D. 1870, I traded with Abram A. Moore for a note which he held on John Milner, j'r, for ten thousand dollars, payable to Abram A. Moore or order, due the 25th day of December of the same year, A. D. 1870. I don't remember the date of the note. I think it was dated about two weeks, or may be a little longer, before I got it. After I got the note John Milner, j'r, paid me seventeen hundred dollars in common currency on it, about the middle of January, A. D. 1871, and took up this note and gave me another note for the balance due, for eight thou-

sand three hundred dollars, payable to Moses Milner or order, due two years after date and dated about the middle of January, A. D. 1871, with eight per cent. interest per annum. Some time in the year 1871, perhaps in the fall, (don't remember the time of the year,) I traded this last-mentioned note to my brother, Peter Milner. I have not seen the note since.

(To which answer and evidence the assi'nee and the defendants Long and Walker, by their counsel, objected, and asked the court to rule
377 out and exclude the said evidence as irrelevant; but the court overruled the objection and received the said evidence; to which judgement and ruling of the court the said counsel expected.)

Cross-examination by counsel for assignee and for the defendants Walker and Long and Samuel J. Moore:

Question. I' what business had you been engaged for three or four years next before 1870, and in what business have you been since engaged in?

Answer. Chiefly in farming. Before seventy ('70) I dealt a little (but a little) in stock, and sometimes in a little peice of land.

Question. To what extent or amount had you dealt in stock, and what little peice of land do you mean you dealt in?

Answer. Some years I would deal in hogs or cattle not to exceed three hundred dollars, others a thousand or twelve hundred. Previous to the year 1870 I bought, for seven dollars per acre, 140 acres of land in Franklin County, Illinois; it might *it might* have been more than four years before 1870; it might have been within four years. I also within
378 four years previous to 1870 bought a peice of sixty acres of land, trading in the payment of it the first-named tract. The sixty acres lies principally in Paint Township, Highland County, Ohio, a part of it in Penn Township, same county. In 1869 I bought 113 acres of land in Penn Township, Highland County, Ohio, paying $2,500.00 down, the residue in two annual payments of $2,000.00 each, with interest. There are 142 acres in my home-farm, which is neither of the before-named peices of land.

Question. What did you give Moore for the $10,000.00 note, and how did you pay it?

Answer. I traded Moore 640 acres of land in Hamilton County, Illinois, for the note, even-up. It is mostly timbered. I never saw the land, though. I never did own the land.

Question. Who did own the land when you traded for the note which you say you got of Moore?

Answer. Peter Milner.

Question. What relationship does Peter Milner have to you?

Answer. We are said to be brothers.

Question. What is the relationship between yourself and John Milner, j'r?

379 Answer. We are brothers.

Question. How long had Peter Milner owned that land?

Answer. I don't know.

Question. Was the land improved?

Answer. I was told—to the best of my recollection, I was tóld there were about 40 acres of it improved and a little log-house on it.

Question. What was the tract of land worth when you bought the note from Moore?

Answer. I don't know what the land was really worth. I had an agreement with Peter to pay him twelve and a half dollars an acre for

the land if I had a chance of trading it off that season. That's all I can tell about the value of the land.

Question. Had Moore ever seen the land before he traded for it?

Answer. I think not.

Question. When you bought the note from Moore, did you know for what John Milner had given the note to Moore?

Answer. Moore said he had sold his farm to John Milner, and, to the best of my recollection, that note was the first payment.

380 Question. Did you know when you bought the note from Moore that he was broken up financially?

(The counsel for John Milner, j'r, objected to the question as irrelevant. Register overruled objection, and said counsel excepted.)

Answer. I did not.

Question. Did you not know that he was being prosecuted for an alleged assault with an intent to commit a rape on Mrs. Townsend, and that she and her husband had sued him for a large sum of money as damages for injuries done her in the assault?

Answer. I had heard about that.

Question. Did you know he had made some disastrous hog contracts, which were likely to result in heavy losses to him?

Answer. Not at the time I traded with him for the note.

Question. Did you know he had sold and conveyed all the real estate he had in Ohio?

Answer. He told me he had sold his farm where he at that time lived, and I know of his owning no other land.

381 Question. State how you came to buy or trade for the note.

Answer. I bantered Moore for a trade for his farm before he sold it, and he refused. I afterwards again bantered him for a trade for his farm, and he told me he had sold his farm to my brother John. The second time I bantered him was in Highland County, on the public road, not far from where I live. I knew nothing at all of his being in Highland County until I met him. When I bantered him this second time he said, "I have sold my farm, but I have a note, Uncle Moses, which I will trade you for your land, if I trade you anything." I asked him the size of the note; he said it was a ten-thousand-dollar note, on John Milner—or father-in-law, I think, were the words—and that it was for purchase-money for the farm. I told him I still had the privelege of trading off that six hundred and forty acres of land; I asked him if he had any disposition to move to Illinois. He said (I think) he had a notion to purchase land in Missouri. I said, if you want Missouri land, I can't accommodate you. I still told him I would trade him a

382 right good piece of Illinois land, a full section. He said, "Well, what is the best you will take for it?" Now, as I best recollect, I asked him $16.00 an acre for the land; I think he asked me if it was not than land was rating at in that section. I replied to him that I had sold a piece in an adjoining county for eleven dollars an acre. I told him also that a cousin of mine had been there and seen both pieces of land; he said the Hamilton County was worth the most money per acre. He asked who I sold the Franklin County land to; I told him I sold it to a man by the name of Thornburg, in Indiana, and that I had since seen Thornburg, and he had been to look at the land, and that he was well pleased with it. I just told him, "I'll give you an even dicker for the ten-thousand-dollar note, and won't do any more." We parleyed and talked a little while, (I had been riding with him in his buggy, but had got as far as I desired to go,) and then I got out of the buggy; I told him that I had made him my best offer. I

told him, also, that if he seen proper to take me up, I could not make him a deed then, for my brother was away in the West, and we
383 would have to wait till he returned. I further told him that if he choosed to go home and consult his wife, or go and see the land and come back and take me up before I had made any other trade of the land, it should still be a trade, but otherwise it should not. He said, "Uncle Mose, I'll take you up at your offer and try it;" and then we closed the bargain in that way. There was nothing definite said as to the time of the making of the deed. He said he would fetch the note down soon, or words to that effect.

I gave the note in the month of December, and before it became due, but did not make the deed then; my brother had not returned. I don't think the deed was made until three or four months after I got the notes. When my brother Peter returned, I told him I had traded the land to Abram A. Moore, and I wanted him and his wife to make Moore a deed. I was not present when the deed was made. I don't know why the making of the deed was delayed so long, from the time the note was delivered to me until the deed was made. Moore held no title-bond nor article of agreement, nor note or memorandum in writing for the land from me, and I don't know of his holding any
384 from my brother Peter. I don't know why the note was endorsed and delivered to me before a deed was made to Moore for the land. It was endorsed and delivered at my house in my absence.

Question. What circumstances, if any, enables you to recollect that the note was endorsed by Moore and received by you before its maturity?

Answer. I don't think of any, except that at the time we made the trade he told me when the note would be due.

Question. Did Moore tell you that you must get the note into your possession before it was due, or did you tell Moore that you must get it before it was due?

Answer. I don't think there was any such a word passed between us.

Question. Why, then, was the note endorsed and delivered to you before the deed was made, before Moore got anything of it?

Answer. I cannot tell. I told Moore I couldn't tell when my brother would be at home; it might be a month or it might be more, and that the deed could not be made until he came home, but that he might bring his note on; and the note was brought.

385 Question. How long after the trade was it before your brother came back?

Answer. I think about three weeks, perhaps a little longer.

Question. How long before its maturity was it that the note came to your hands?

Answer. My best recollection is—and I will so say as my best recollection—fifteen days before it was due.

Question. Did you receive the note as absolutely yours at the time it came into your hands, or did you receive it conditionally only, to be yours when the deed was made?

Answer. I received the note as my note when it was brought, and not conditionally.

Question. When Moore thus parted with the note, what did he get for it? Simply your verbal promise that Peter Milner and wife would make him a deed for the lands?

Answer. That was all that I could see, that he got a deed for the land.

Question. Was there any agreement between you and Moore that the deed for the land was not to be made to him for some time?

Answer. No, sir.

Question. When you made the contract with Moore, was there any arrangement between you and him that he was to pay for the land before he got the title to it?

386 Answer. I don't remember any special word in that way. Says I, "Abram, I'll take that $10,000.00 note from you, and I'll see that my brother makes you a deed for the land."

Question. How much, in fact, did you pay your brother Peter for the land?

Answer. I paid or gave him the $8,300.00 note I had previously taken from my brother John, (as hereinbefore stated.)

Question. When did you hand over the $8,300.00 note to Peter?

Answer. Some time after the opening of spring in 1871. I asked Peter if he had made the deed to Moore. He said he had not. Afterwards, not exceeding a month or two afterwards, I asked him again if he had made the deed to Moore. He said he had, and I then endorsed the note in blank and delivered it to him. This may have been in the latter part of June, 1871. I don't think it was later. The payment by John Milner to me of the $1,700.00 was made before Moore got any title to the land.

Question. Before the deed was made to Moore for the Illinois land, had you heard of Moore's financial troubles?

(OBJECTION. Objected to by counsel for John Milner, j'r, for
387 alleged irrelevancy and because not with' perview of examination-in-chief. Objection overruled, and ruling excepted by same counsel.)

Answer. I think I had. I think I had heard of the Townsend troubles, and that he was owing his brother Thomas money, (I don't know to what amount,) and a man in this place by the name of Shepherd, and that there was likely to be suits between him and Walker and Long about some hog contracts. I don't think I heard of the Walker and Long difficulty till the latter part of 1870 or the commencement of 1871; probably about the latter part of the winter of 1870-'71.

Question. What did Moore do with the land in Hamilton County, Illinois, which was deeded to him by Peter Milner and wife?

Answer. Within the last year I heard my brother John say that he had got the same land from Moore.

(The last question and answer, together with the question relating to the suits against said Moore as to his indebtedness, objected to by counsel for John Milner, j'r, and the court was asked to rule out the same as irrelevant and as not proper subject of cross-examination; but the court overruled the objection and motion; to which judgement
388 and ruling of the register said John Milner, by his counsel, excepts.)

MOSES MILNER.

PETER MILNER, being duly sworn, says: My name is Peter Milner; I live in Fairfield Township, Highland County, Ohio, and am a brother of John Milner, j'r, and brother of Moses Milner.

By counsel for John Milner, j'r:

Question. State whether you have or have had a note on John Milner, j'r, which was payable to Moses Milner; if so, state when and how you obtained it, what amount of money it called for, its date, when payable, and what payments, if any, has been made thereon, and by whom.

(OBJECTION. The above question objected to by the counsel for the assignee and the defendants Long and Walker as irrelevant; which objection was overruled by the register; to which judgement and ruling of the court the said counsel excepts.)

Answer. I have a note on John Milner, j'r, which I got of Moses Milner. I don't remember exactly when I obtained it, but I think it was some time in January, A. D. 1872. I got it in payment for a section
389 of land I let Moses Milner have, situate in Hamilton County, Illinois. Some time in the spring of the year 1870, Moses told me he had a banter to trade a piece of western land in Illinois, and asked me what he would have to allow me for this section of 640 acres of land in Hamilton County, Illinois, in case he could trade it off. I told him he would have to allow me $12.50 per acre for it. There was nothing more said about it between him and me, I think, until he told me he had traded it off. I think in December, 1870, but don't remember certainly the time, he told me he had traded the land off, and asked me to make a deed at some convenient time to Abram A. Moore for the land, and I made the deed to Moore, but it was probably six months after he had told me he had traded the land before I made it. After I made the deed, I think within a few days, I got the note of Moses in full payment of the land. The note was for eight thousand three hundred dollars, due two years after date, with eight per cent. interest per annum. I don't remember exactly the date of it, but I think it was dated in January, 1871, payable to Moses Milner or order, and Moses endorsed it by signing
390 his name on the back of it. When I traded with Moses, I expected to take his obligation alone for the land; but after he sold the land, and after I had made the deed, he proposed to me to take John's note, which I agreed to do, for eight thousand three hundred dollars, and I got the note very shortly afterwards, maybe at the same time. John Milner made a payment to me on the note last January, I think probably the fore part of January, A. D. 1873, of one thousand and twenty dollars, cash, and he made another payment in March of 1873 of six hundred dollars, by a note which he had against me. I still hold the note, and there have been no other payments made on it. The six hundred-dollars note was a note I had given Abram A. Moore for rent, grain, I owed him. I gave Moore my note for six hundred dollars for his share of the grain grown on lands he had rented, and I gave the note last March, 1872, due one year after date, and the note became due last March, 1873, and was for the crop of 1872 growing on the land Abram A. Moore was then living on in Clinton County. I don't how Milner got the note from Moore; it was assigned on the back with the name A. A. Moore.

391 (The counsel for the assignee and for defendants Walker and Long moved the register to rule out the whole of the above evidence as incompetent for irrelevancy. The motion was overruled and the evidence received; to which ruling of the register the said excepted.)

Cross-examination by counsel for assignee and for defendants Walker and Long and Samuel J. Moore:

Question. Do you know how or from where John Milner, j'r, got the thousand dollars he paid you?

Answer. I do not.

Question. When Moses told you to make the deed to Abram A. Moore "at some convenient time," did he also tell you that there was no hurry about it?

Answer. I don't think he did. The acknowledgement of the deed was made before Eli Johnson, in Leesburg.

Question. Was there any agreement between you and Moses, before you made the deed to Moore, that you would take a note on John Milner, j'r, in payment of the land?

Answer. No, sir.

PETER MILNER.

HENRY A. SHEPHERD, being duly sworn, says: I live in Hills-
392 boro', Ohio. I, as guardian of Emma Smith, hold a note on Abram A. Moore, the bankrupt, for three thousand dollars, dated July 13th, 1870, secured by mortgage on part of the lands described in the petition in this case as set forth in my answer in this case. John Milner, j'r, paid me two hundred and forty dollars, the interest on said note, on or about the 21st day of August, 1871, as I recollect, although I dated the receipt therefor July 21st, which I think I did by mistake. I gave M'r Milner a receipt for the money, which receipt is now shown to me, and is in the words and figures following:

"July 26, 1871. Received of John Milner $240.00, to apply on note of A. A. Moore of $3,000.00, dated July 13th, 1870, and due July 13th, 1871.

"HENRY A. SHEPHERD."

I had before notified M'r Moore that the interest must be paid. When the note and mortgage was made, the agreement between Moore and me outside of the mortgage was that I should be paid ten per cent. per annum, and if the ten per cent. was promptly paid, the note and mortgage was to run, so long as the ten per cent. should be paid, until I needed the money. M'r Milner had knowledge of the arrangement, and
when he paid me the $240.00, which was eight per cent. on the
393 money loaned, I asked him if he did not intend to pay the ten per cent. He said he proposed to pay the money according to the terms of the note and mortgage, and no more. I told him, very well; that the note was due, and if he did not propose paying the ten per cent. according to Moore's agreement with me, I would sue it and foreclose the mortgage at the next term of the court, if it was not paid off. He then said he would carry out the agreement and went away. In a few days Moore came and paid me sixty dollars, which, with the $240.00 previously paid by Milner, made the ten per cent. for one year. I asked Moore who I would receipt to for the $60.00, and Moore said I had better receipt to Milner, as I had the other. I asked that question because Moore had told me when he paid me the money "that there is sixty dollars for John Milner." I then gave him a receipt, which receipt is now before me, and in the words and figures following: "Rec'd August 30th, 1871, of John Milner the sum of sixty dollars.

"HENRY A. SHEPHERD."

(The counsel for the assignee and for the defendants Walker and Long objected to the whole of the above evidence as incompetent
394 for irrelevancy, and asked the register to rule out the same; but the register overruled the objection, and the counsel excepted.)

Cross-examination by counsel for the assignee and for the defendants Walker and Long and Samuel J. Moore:

Question. Did John Milner, j'r, stand in any way bound for the payment of the mortgage-debt you have mentioned before the conveyance of the land described in the mortgage to him by Moore?

Answer. No, sir.

Question. Whose were the $240.00 which you received by the hand of Milner before it was paid to you, Moore's or Milner's?

GEORGE BARROW, being duly sworn:

I live in New Vienna, Clinton County, Ohio, and lived there in 1870. I am 39 years old; am acquainted with Abram A. Moore, and have been for six or eight years last past. In the spring and summer of 1870 it was the general talk in Vienna and the neighborhood round about that he had got involved in hog-trade and some other troubles, and that these would probably break him up. The other troubles
395 (than the hog trade) was the Townsend troubles, involving a prosecution for an alleged attempt to commit a rape on Mrs. Townsend, and a suit for damages for injuries alleged to have been done by him in the alleged attempt to commit the rape on her. I was keeping store in Vienna and selling goods. The report was general in Vienna and the neighborhood as early as the latter part of August or fore part of September, 1870. I cannot say precisely as to the time in 1870. I was township clerk of Green Township, and as such I filed a bill of sale on property embracing wheat, corn in shock, hogs, horses. The bill of sale was to Samuel J. Moore from Abram A. Moore, to secure between two and three thousand dollars, pretty well on to three thousand, perhaps that amount. My recollection at present is that that bill of sale was deposited either the latter part of October, 1870, or in the fore part of November of the same year. The mortgage or bill of sale was taken away in February, (I think,) 1871.

(The counsel for Milner objected to so much of the foregoing evidence of the said witness as details the talk or rumor of the neighborhood as incompetent; but the register overruled the objection, and the
396 said counsel excepted.)

Cross-examination by counsel *by* for John Milner, j'r:

I think I am not mistaken as to the date of the filing of the mortgage or bill of sale being either the latter part of October or the first part of November, 1870. I cannot be positive as to the exact date. The mortgage stated the consideration was evidenced by a promissory not' of . My recollection is not that the consideration was that Samuel J. Moore should pay Thomas Moore's note; Abram A. Moore owed him. My recollection of the circumstances is what I have stated it. My recollection is that the instrument was an absolute bill of sale. There was an affidavit attached to it made by Samuel Moore.

GEO. E. BARROW.

WILLIAM SWAINE, being duly sworn:

I am living now near Lexington, in Highland County, Ohio. In 1871, after June, I lived near Lexington; I lived there for nearly two years, about three miles from Lexington. I am 26 years old; I am a nephew of Abram A. Moore. The general talk in the neighborhood was that he (Abram A. Moore) would break up; it was said that he was
397 spending a good deal of money in the Townsend suit; so that, even should the damages not be great, he would, nevertheless, lose largely by them, and that he had made hog contracts on which he would lose heavily, the price of bacon and pork having gone down. This report and talk was general in the neighborhood where Moore lived, and in Vienna and Lexington, and in the vicinity of these places. There were two sides to the question, however. Some thought that he

would not break up, but would be able to pay out. I never knew my uncle, Abram A. Moore, prior to the deeding his farm to Milner, own any real estate except the farm he lived on, and which he conveyed to his father-in law, Milner, and a town lot somewhere in the West which he bought for a dollar, and on which he never paid taxes.

I understand there are 276 acres in the farm. In 1870 it ought to have brought sixty to sixty-five dollars per acre in cash; sold on time, on customary payments, it ought to have brought $75 or $80 an acre. He had about the amount of stock a man ordinarily keeps on such a farm. I would estimate, though it is a guess, his personal property was worth,
398 in 1870, between two and three thousand dollars. I don't know of his having any credits. I know, from conversation with him, that he was some in debt independent of the Townsend claims and the hog contracts. I heard the talk about the financial condition of Abram A. Moore, as I have stated, in the neighborhood where Samuel J. Moore lived, in Lexington and neighborhood, and in Vienna and its neighborhood, but being a relation of Abram A. Moore, I did not, I suppose, hear so much of the talk as I otherwise would. Shortly after I came back from Vienna, in June, 1870, I asked A. Moore if he intended to put his property out of his hands. His answer was that he did not intend to let the*i*ves rob his children. The reason I asked him the question was that I had heard he was going to put his property out of his hands.

(The above deposition objected to as incompetent as to any reports or rumors of Moore's circumstances in 1870, as hearsay, and as not tending to prove the issue between the assignee and John Milner, j'r. The register overruled the objection and admitted the evidence: to which action of the register the said Milner, by his counsel, excepted.)

W. T. SWAINE.

399 Know all men by these presents, that John Milner, j'r, of the county of Highland, and State of Ohio, in consideration of one thousand dollars ($1,000) to him paid by Sarah A. Moore, of the county of Clinton, State of Ohio, the receipt whereof is hereby acknowle'ged, do' hereby grant, bargain, sell, and convey to the said Sarah A. Moore, her heirs and assigns, forever, the following premises, situate in the county of Clinton and State of Ohio, the first tract or parcel of land bounded and described as follows: Being part of W'm Moore's survey, No. 2970, and beginning at a stone where a hickory bears S. 12° E. 13½ links, (the black oak gone,) south corner to Hugh Evans' land, and in a county road; thence along said road with Evans' line N. 43° E. 79.92 poles to a stone; thence S. 44° 10′ E. 211$\frac{3}{10}$ poles to a
400 stake in the northwest of Bernard's survey, No. 707, 7$\frac{3}{4}$ poles southwest of the north corner of said survey; thence with the said line S. 44¼ W. 79$\frac{32}{100}$ poles to a stone, where an ash bears N. 21° W. 6 links, and an ash bears S. 52 E. 18 links, south corner of the original survey; thence N. 44° W. 210 poles to the beginning, containing one hundred and five and three-eighths acres, more or less, excepting and reserving a lot, containing about one acre, at the south corner of the tract, which was heretofore deeded to George Burns.

Also, another tract of land, in the same survey, bounded and described as follows: Begin'ing at a stone in the line of Bernard's survey, No. 707, and in the north side of the county road leading from Wilmington to New Lexington; thence with said road N. 85° W. 9¼ poles to a stone in the patent line of the original survey, No. 2970; thence with said line N. 45° W. 11$\frac{15}{100}$ poles to two hickories and sugar-tree in the said line; thence S. 83° E. 23½ poles to a stone in the patent line of said Bernard's

survey, No. 707; thence with the same S. 44° W. 8½ poles to the beginning, containing one acre of land, more or less.

Also, another tract of land, situate in the same survey, and de-
401 scribed as follows: Beginning at a stake in M'r's Henry's line, E. corner to Abraham Moore's said tract; thence with the line of said tract N. 44° W. 212½ poles to the north corner of said tract, in the centre of the New Vienna and Centreville road, and in the line of R. P. Finley's land; thence with said road and line N. 43° E. 37 1/10 poles to a stake, corner to a 76¼-acre tract, deeded by W'm Moore & wife to Tho's C. Moore, where a stone, another corner to said tract and corner to R. P. Finley tract, bears N. 43° E. 25¼ links; thence with the line of said Tho's C. Moore's tract S. 44° E. 214½ poles to a stake, corner to a 76¼-acre tract, deeded by said W'm Moore and wife to Margery A. Moore, where a maple twelve inches in diameter bears S. 6° W. 39 links; thence with the line of said tract S. 44¾ W. 37 1/10 poles to the beginning, containing forty-nine acres and two roods of land, more or less.

Also, another tract of land, situate in the same county and State, and described as follows: Beginning at a stone in the middle of the road leading from Wilmington to New Lexington; thence with said road
S. 85° E. 76¼ poles to a stone in the northeast line of the original
402 survey; thence with Moore's survey N. 42° 32' W. 54 7/10 poles to a or stake in said line of said survey; thence S. 45° E. 52 1/10 poles to the beginning, containing eight and three quarters acres of land, more or less, part of survey No. 994, in the name of Benjamin Templin.

Also, another tract of land, being part of Benjamin Templin's survey, No. 994, and described as follows: Beginning at a box-elder and ash in the NW. line of Templin's survey, N. corner of George Hoskins', s'r, land; thence S. 45° W. 118.55 poles to a stake; thence N. 45° W. 84.28 poles to a stake in the center of the road; thence N. 45° E. 118.56 poles to a stone, corner to W'm Hoskins' land; thence S. 45° E. 84½ poles to the beginning, containing sixty-two acres three roods and 22 perches of land, more or less.

Also, another tract or parcel of land, situate in and being part of Benjamin Templin's survey, No. 994, and described as follows: Beginning at a stone in the centre of the Wilmington road, corner of I. N. Henry's land; thence with said road S. 67° E. 45.76 rods to a stone in the centre of said road, corner to John Powell's land; thence with said road S. 71°
E. 20.40 rods to a stone, corner to A. Moore's land; thence with
403 his line N. 47° E. 49 rods to another corner of A. Moore's lands; thence with his line 44° W. 61 rods to another corner of A. Moore's land; thence with his line S. 46° W. 76 rods to the place of beginning, containing twenty-three acres three roods and fifteen perches of land, be the same more or less.

Also, another tract or parcel of land, described as follows: Beginning at a stone in the Wilmington road, corner of A. Moore's land; thence with his line S. 46° W. 82 55/100 rods to a stone in the line of John Hoskins' land; thence with his line S. 43° E. 41½ rods to a stake or stone in the line of John Powel's land; thence with his line N. 47° E. 101 50/100 rods to a stake or stone in the Wilmington road; thence with said road N. 67° W. 45.76 rods to the beginning, containing twenty-four acres and two and one-half perches of land, be the same more or less, and all the estate, title, and interest of the said John Milner, j'r, either in law or equity, in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the
404 rents, issues, and profits thereof, to have and hold the same to

the only proper use of the said Sarah A. Moore, her heirs and assigns, forever.

And the said John Milner, j'r, for himself and for his heirs, executors, and administrators, does hereby covenant with the said Sarah A. Moore, her heirs and assigns, that he is the true and lawful owner of the said premises, and has full power to convey the same; that the title so conveyed is clear, free, and unincumbered; and further, that he will warrant and defend the same against all claim or claims of all persons whomsoever.

In witness whereof the said John Milner, j'r, has hereunto set his hand and seal this 19th day of November, in the year of our Lord one thousand eight hundred and seventy.

JOHN MILNER, J'R.

Signed, executed, and acknowledged in presence of us—
W'M H. ECKMAN.
LOU. ELLER.

405 THE STATE OF OHIO,
Highland County, ss:

Be it remembered that on the 19th day of November, in the year of our Lord one thousand eight hundred and seventy, before me, W'm H. Eckman, mayor of Greenfeild, personally came John Milner, j'r, the grantor in the foregoing deed, and acknowledged the signing and sealing thereof to be his voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, on the day and year aforesaid.

[SEAL.] W'M H. ECKMAN,
Mayor of Greenfeild, Highland County, O.

Know all men by these presents that we, Abram A. Moore
406 and Sarah A. Moore, wife of said Abram A. Moore, of the county of Clinton, and State of Ohio, in consideration of the sum of twenty-one thousand and nine hundred dollars in hand paid by John Milner, j'r, of the county of Highland, and State of Ohio, have bargained and sold, and do here grant and convey, unto the said John Milner, j'r, his heirs and assigns, forever, the following premises, situate in the county of Clinton, and State of Ohio, the first tract or parcel of land bounded and described as follows: Being part of William Moore's survey, No. 2970, and beginning at a stone where a hickory bears S. 12° E. 13½ links, (the black-oak gone,) S. corner to Hugh Evans' land and in a county road; thence along a county road with Evans' line N. 43° E. 79.92 poles to a stone; thence S. 44° 10′ E. 211 $\frac{8}{10}$ poles to a stake in the NW. line of Bernard's survey, No. 707, 7¾ poles SW. of the N. corner of said survey; thence with said
407 line S. 44¼° W. 79 $\frac{82}{100}$ poles to a stone where an ash bears N. 21° W. 6 links, and an ash bears S. 52° E. 18 links, S. corner of the original survey; thence N. 44° W. 210 poles to the beginning, containing one hundred and five acres and three-eighths of an acre, be the same more or less, except and reserving a lot containing about one acre at the south corner of the tract, which said lot was heretofore deeded to George Barnes.

Also, another tract of land, the same survey, bounded and described as follows: Beginning at a stone in the line of Bernard's survey, No. 707, and on the N. side of the county road leading from Wilmington to New Lexington; thence with the line of said road N. 85° W. 9¼ poles to a stone in

the patent line of the original survey, No. 2970; thence with said line N. 45° W. 11 15/100 poles to two hickories and the patent line of said Bernard's survey, No. 707; thence with the same S. 44° W. 8½ poles to the beginning, containing one acre of land, be the same more or less.

Also, another tract or parcel of land, situate in the same survey, and bounded and described as follows: Beginning at a stake in Mrs.
408 Henry's line, E. corner to said Abram A. Moore's 105-acre tract of land; thence with the line of said tract N. 44° W. 212½ poles to the N. corner of said tract in the centre of the New Vienna and Centreville road, and in the line of R. P. Findley's land; thence with said road and line N. 43° E. 37 1/10 poles to a stake, corner to a 76¼-acre tract deeded by William Moore and Susannah, his wife, to Thomas C. Moore, where a stone, another corner to said tract and corner to R. P. Findley's tract, bears N. 43° E. 25¼ links; thence with the line of said Thomas C. Moore's tract S. 44° E. 214½ poles to a stake, corner to a 76¼-acre tract deeded by William Moore and Susannah, his wife, to Margery A. Moore, where a maple 12 inches in diameter bears S. 6° W. 39 links; thence with the line of said tract S. 44¾° W. 37 1/10 poles to the beginning, containing forty-nine acres and two roods of land, more or less.

Also, another tract or parcel of land, situate in the same county and State, and bounded and described as follows: Beginning at a stone in the middle of the road leading from Wilmington to New Lexing-
409 ton; thence with said road S. 85° E. 76 1/10 poles to a stone in the N. E. line of the original survey; thence with Moore's survey N. 42° 30′ W. 54 7/10 poles to a stone or stake in the said line of said survey; thence S. 45° E. 52 2/10 poles to the beginning, containing eight and three-quarters acres of land, be the same more or less, being part of survey No. 994, in the name of Benjamin Templin.

Also, another tract or parcel of land, being part of Benjamin Templin's survey, No. 994, and bounded and described as follows: Beginning at a box elder and ash in the NW. line of Temple's survey, north corner to George Hoskin's, s'r, land: thence S. 45° W. 118.56 poles to a stake; thence N. 45° W. 84.28 poles to a stake in the centre of the road; thence N. 45° E. 118 56/100 poles to a stone, corner of William Hoskins' land; thence S. 45° E. 84½ poles to the beginning, containing sixty-two acres three roods and twenty-two perches of land, more or less.

Also, another tract or parcel of land, situate in and being a part of Benjamin Temple's survey, No. 994, bounded and described as follows: Beginning at a stone in the centre of the Wilmington road, corner of J. N. Henry's land; thence with said road S. 1° 7′ E. 45.76 poles to a stone in the centre of said road, corner to John Powell's ; the' with said road S. 71° E. 20.40 rods to a stone, corner of A. Moore's land;
410 thence with his line N. 44° E. 49 rods to another corner of A. Moore's land; thence with his line 44° W. 61 rods to another corner of A Moore's land; thence with his line S. 46° W. 76 rods to the place of beginning; containing twenty-three acres, three roods, and fifteen perches of land, be the same more or less. Also another tract or parcel of land bounded and described as follows: Beginning at a stone in the Wilmington road, corner of A. Moore's land; thence with his line S. 46° W. 82.88 rods to a stone in the line of John Hoskins' land; thence with his line S. 43° E. 41½ rods to a stake or stone in line of John Powell's land; thence with his line S. 47° E. 101.80 rods to a stake or stone in the Wilmington road; thence with said road N. 67° W. 45.76 rods to the beginning; containing twenty-four acres and 2½ perches of land, more or less:

To have and to hold said premises with the appurtenances unto the

said John Milner, j'r, his heirs and assigns, forever; and the said Abram A. Moore, for himself and for his heirs, doth hereby covenant with the said John Milner, j'r, his heirs and assigns, that he is lawfully seized of the premises aforesaid, that the premises are free & clear from
411 all incumbrances whatever, and that he will forever warrant and defend the same with the appurtenances unto the said John Milner, j'r, his heirs and assigns, against the lawful claims of all persons whomsoever.

In testimony whereof the said Abram A. Moore and Sarah A. Moore have hereunto set their hands and seals this 17th day of November, in the year of our Lord one thousand eight hundred and seventy.

ABRAM A. MOORE [SEAL.]
SARAH A. MOORE. [SEAL.]

Signed, sealed, and acknowledged in presence of—
JAMES F. BOWERS.
C. C. BOWERS.

STATE OF OHIO, *Clinton County, ss:*

Before me, C. C. Bowers, a justice of the peace in and for said county, personally appeared the above-named Abram A. Moore and Sarah A. Moore, his wife, and acknowledged the signing and sealing of the above conveyance to be their voluntary act and deed; and the said Sarah A. Moore being at the same time examined by me separate and apart from her said husband, and the contents of said instrument made
412 known to her by me, she then declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith.

This 17th day of November, A. D. 1870.

C. C. BOWERS, *J. P.*

[$22.00 rev. cancelled.]

Filed November 22, 1870. Recorded November 23, 1870.
W. B. BRITTON, *R. C. C., O.*,
Per D. J. FOLAND, *Dep'y.*

I hereby certify that the foregoing is a true and correct copy of the deed made by Abram A. Moore and Sarah A. Moore to John Milner, j'r, dated 17th day of November, A. D. 1870, and recorded in book 17, pages 384–386, of the deed record of Clinton Co.

Witness my hand and seal this 26th day of June, A. D. 1873.

[SEAL.] M. J. GRADY, *R. C. C., O.*

413 Know all men by these presents, that we, John Milner, j'r, and Meichel, his wife, of the county of Highland, and State of Ohio, in consideration of the sum of sixteen thousand dollars, ($16,000,) to them in hand paid by Abram A. Moore, of the county of Clinton, and State of Ohio, do hereby remise, release, and forever quit-claim unto the said Abram A. Moore, his heirs and assigns, forever, all our title and estate, legal and equitable, in the following premises, with the appurtenances, situate in the county of Clinton, and State of Ohio, bounded and described as follows:

1ST TRACT.—The first tract or parcel of land bounded and described as follows: Being part of W'm Moore's survey No. 2970, and beginning at a stone where a hickory bears S. 12° E. 13¾ links, (the black oak gone,) south corner to Hugh Evans' land, and in a county road; thence

along said road with Evans' line, N. 43 E. 79.92 poles to a stone; thence S. 44° 10′ E. 211 9/10 poles to a stake in the N. W. line of Bernard's survey, No. 707, 7¾ poles southwest of the north corner of said survey; thence with said line S. 44¼° W. 79.92 poles to a stone,
414 where an ash bears N. 21° W. 6 links, and an ash bears S. 52° E. 18 links, south corner of the original survey; thence N. 44° W. 21 poles to the beginning, containing one hundred and five and three eighths acres, more or less; excepting and reserving a lot containing about one acre at the south corner of the tract, which said lot was heretofore deeded to George Burnes.

2ND TRACT.—Also another of land in the same survey, bounded and described as follows: Beginning at a stone in the line of Bernard's survey, No. 707, and on the north side of the county road leading from Wilmington to New Lexington; thence with the line of said road N. 85° W. 9¼ poles to a stone in the patent line, the original survey No. 2970; thence with said line N. 45° W. 11.15 poles to two hickories and sugar-trees in the said line; thence S. 83° E. 23½ poles to a stone in the patent line of said Bernard's survey, No. 707; thence with the line S. 44° W. 8½ poles to the beginning; containing one acre of land, more or less.

3RD TRACT.—Also another tract of land, situate in the same survey, bounded and described as follows: Beginning at a stake in M'r's Henry's line, east corner to said A. A. Moore, 105 acre tract of land; thence with the line of said tract N. 44° W. 212½ poles to the north cor-
415 ner of said tract in the centre of the New Vienna and Centreville road, and in the line of R. P. Finley's land; thence with said road and line N. 43° E. 37 1/10 poles to a stake, corner to a 76¼ acre tract deeded by W'm Moore and Susannah, his wife, to Thomas C. Moore, where a stone, another corner of said tract, and corner to R. P. Finley's tract, bears N. 43° E. 25½ links; thence with the line of said Thomas C. Moore's tract, S. 44° E. 214½ poles to a stake corner to a 76¼ acre tract, deed by said W'm Moore and Susannah, his wife, to Margery A. Moore, where a maple, 12 inches in diameter, bears S. 6° W. 39 links; thence with the line of said tract S. 44¾° W. 37 1/10 poles to the beginning; containing forty-nine acres and two roods of land, more or less.

4TH.—Also another tract or parcel of land, situate in the same county and State, bounded and described as follows: Beginning at a stone in the middle of the road from Wilmington to New Lexington; thence with said road S. 85° E. 76¼ poles to a stone in the northeast line of the original survey; thence with Moore's survey N. 42° 30′, W. 54 7/10 poles to a stone or stake in said line of said survey; thence S. 45° E.
52 2/10 poles to the beginning; containing eight and three fourths
416 acres of land, more or less, being a part of survey in the name of Benjamin Temple.

5TH TRACT.—Also another tract or parcel of land, being part of Benjamin Temple's survey No. 994, bounded and described as follows: Beginning at a box-elder and ash in the northwest line of Temple's survey, north corner of George Hoskins, s'r, land; thence S. 45° W. 118.56 poles to a stake; thence N. 45° W. 84 25/100 poles to a stake in the centre of the road; thence N. 45° E. 118.56 poles to a stone corner to W'm Hoskins' land; thence S. 45° E. 84½ poles to the beginning; containing sixty-two acres, three roods, and twenty-two perches of land, more or less.

6TH TRACT.—Also another tract of land, situate in and being part of Benjamin Temple's survey No. 994, bounded and described as follows: Beginning at a stone in the centre of the Wilmington road, corner of J. N. Henry's land; thence with said road S. 67° E. 45.76 rods to a stone in the centre of said road, corner to John Powell's land; thence with

said road S. 71° E. 20.40 rods to a stone corner of A. Moore's land; thence with his line N. 47° E. 49 rods to another corner of A. Moore's land; thence with his line — 44° W. 61 rods to another corner of
417 A. Moore's land; thence with his line S. 46° W. 76 rods to the beginning; containing twenty-three acres, three roods, and fifteen perches of land, more or less.

7TH TRACT.—Also another tract of land bounded and described as follows: Beginning at a stone in the Wilmington road, corner of A. Moore's land; thence with his line S. 46° W. 82.88 rods to a stone in the line of John Hoskins' land; thence with his line S. 43° E. 41½ rods to a stake or stone in the line of John Powell's land; thence with line N. 47° E. $101\frac{80}{100}$ rods to a stake or stone in the Wilmington road; thence with said road N. 67° W. $45\frac{76}{100}$ rods to the beginning; containing twenty-four acres and two and one-half perches of land, more or less.

In testimony whereof we have hereunto set our hands and seals this 19th day of January, A. D. 1872.

JOHN MILNER, J'R. [SEAL.]
MEICHEL MILNER. [SEAL.]

Executed in our presence.
E. P. JOHNSON.
RUEL BEESON.

418 STATE OF OHIO, *Highland County, ss:*

Before me, Eli P. Johnson, a notary public in and for said county, personally appeared the above-named John Milner, j'r, and Meichel Milner, his wife, and acknowledged the signing and sealing the above conveyance to be their voluntary act and deed. And the said Meichel Milner being at the same time examined by me separate and apart from her husband, and the contents of said instrument made known to her by me, she then declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith.

This 19th day of January, A. D. 1872.

ELI P. JOHNSON,
Notary Public.

[$16.00 revenue-stamp on deed, cancelled.]

Filed January 19th, 1872, and recorded same day.
M. J. GRADY, *R. C. C., O.*

WILMINGTON, OHIO, *July* 21, '73.

I hereby certify that the foregoing deed is a true copy of a deed made by John Milner, j'r, and wife, to Abram A. Moore, as recorded in book 19, pages 137, 138, and 139 of the deed record of Clinton County, Ohio.

419 In witness whereof I have hereunto subscribed my name and affixed my official seal the day and year last aforesaid.

M. J. GRADY,
Recorder Clinton Co., O.

Know all men by these presents that we, Abram A. Moore and Sarah A. Moore, his wife, of county of Clinton and State of Ohio, in consideration in hand paid by John Milner, j'r, of Highland County, Ohio, have bargained and sold, and do hereby grant and convey, unto said John Milner, j'r, his heirs and assigns, forever, the following premises, situate in the county of Clinton, Ohio, (the land described in this mortgage being the same as described in a mort-

gage from Abram A. Moore and wife, dated 20th day of January, A. D. 1873, and recorded in book M, pages 97, 98, 99, and 100 of the mortgage record of Clinton County, Ohio, and filed January 22nd, 1872, at 9.22 a. m., and recorded same day.)

Provided alway and these presents upon this consideration,
420 that whereas the said John Milner, j'r. with Samuel J. Moore, is security for the said Abram A. Moore on a certain note of hand given to and held by Joseph C. Worthington for about $1,200.00, dated on or about the 28th day of December, 1869, and drawing ten per cent. interest from date.

Also another note, and when the said John Milner j'r, is security for the said Abram Moore on one other *other* promissory note, given to John B. Moore, for the sum of about $270.00, dated about the 8th day of Septem ber, 1871, with interest at 8 per cent. from date. And whereas the said Abram A. Moore has executed to the said John Milner, j'r, his promissory note of even date herewith for the payment of the following sum of money at the time following, to wit, eight thousand two hundred and ninety-five and $\frac{89}{100}$ dollars, payable the 28th day of December next, with six per cent. interest from date.

Now, if the said Abram Moore or his assigns shall pay the several sums of money aforesaid, for which the said John Milner, j'r, is bound as his security aforesaid, with the interest that may be due thereon, and also shall pay the amount of the aforesaid promissory note given
421 to said John Milner or his assigns when the same becomes due, with the interest thereon, then these presents to be void; otherwise to be and remain in full force.

In testimony whereof the said Abram A. Moore and Sarah A. Moore, his wife, have hereunto set their hands and seals this 19th day of January, A. D. 1872.

ABRAM A. MOORE. [SEAL.]
SARAH A. MOORE. [SEAL.]

Executed in our presence—
E. P. JOHNSON.
RUEL BEESON.

STATE OF OHIO, *Highland County, ss:*

Before me, E. P. Johnson, a notary public in and for said county, personally appeared the above-named Abram A. Moore and Sarah A. Moore, his wife, the grantor in the foregoing mortgage, and acknowledged the signing and sealing of the same to be their voluntary act and deed; and the said Sarah A. Moore being at the same time examined by me separate and apart from her husband, and the contents of said instrument made known to her by me, she then declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith.

422 This 16th day of January A. D. 1872.
[SEAL.] E. P. JOHNSON,
Notary Public.

[10.00 revenue-stamp, cancelled.]

Received Jan. 19th, 1872, at 2.30 p. m. Recorded same day.
M. J. GRADY,
R. C. C., O.

WILMINGTON, O., *Aug. 4th*, 1873.

I, M. J. Grady, recorder of Clinton County, Ohio, do hereby certify that the foregoing is a true copy of a mortgage given by Abram A.

Moore & wife to John Milner, j'r, except the land is not described in full, but being the same as described in the mortgage afterwards made by Moore and wife to John Milner, j'r, as refer'ed to in the foregoing copy, filed for record Jan. 19th, 1872, at 2.30 p. m., and recorded same day in book M., pages 93, 94, and 95, in the mortgage record of Clinton County, Ohio.

Witness my hand and seal the day and year last aforesaid.

[SEAL.] M. J. GRADY,
R. C. C., O.

423 Know all men by these presents that we, Abram A. Moore and Sarah A. Moore, his wife, of the county of Clinton and State of Ohio, in consideration of the sum of nine thousand seven hundred and sixty-five dollars and twenty-nine cents, ($9,765.29,) in hand to them paid by John Milner, j'r, of the county of Highland *County* and State of Ohio, the receipt whereof is hereby acknowledged, have bargained and sold, and do hereby grant and convey, unto the said John Milner, j'r, and to his heirs and assigns, forever, the following premises, situate in the county of Clinton and State of Ohio, bounded and described as follows, to wit: The first tract or parcel of land bounded and described as follows, being part of William Moore's survey, No. 2970, and beginning at a stone where a hickory bears S. 12° E. 13½ links, (the black oak gone,) south corner to Hugh Evans' land in the county road; thence along said road with Evans' line N. 43° E. 79.92 poles to a stone; thence S. 44° 10′ E. 211 $\frac{8}{10}$ poles to a stake in the northwest line of Bernard's survey, No. 707, 7¾ poles southwest of the north corner of said survey; thence with said line S. 44¼° W. 79.92 poles to a stone where an
424 ash bears N. 21° W. 6 links, and an ash bears S. 52° E. 18 links, south corner of the original survey; thence N. 44° W. 210 poles to the beginning; containing one hundred and five and three-eight's acres of land, more or less, excepting and reserving a lot containing about one acre at the south corner of the tract, which said lot was heretofore deeded to George Burns.

2ND TRACT.—Also another tract of land in the same survey, bounded and described as follows: Beginning at a stone in the line of Bernard's survey, No. 707, and on the north side of the county road leading from Wilmington to New Lexington; thence with the line of said road N. 85° W. 9¼ poles to a stone in the patent-line of the original survey No. 2970; thence, with said line, N. 45° W. 11 $\frac{15}{100}$ poles to two hickories and sugar-trees in the said line; thence S. 85° E. 23¾ poles to a stone in the patent-line of said Bernard's survey, No. 707; thence, with the same, S. 44° W. 8¾ poles to the beginning; containing one acre of land, be the same more or less.

Also another tract or parcel of land situate in the same survey, and bounded and described as follows: Beginning at a stake in M'r's Henry's line, east corner, to said Abram A. Moore 105 acre tract of land; thence, with the line of said tract, N. 44° W. 212½ poles to the
425 north corner of said tract in the centre of the New Vienna and Centreville road, and in the line of R. P. Finley's land; thence, with said road and line, N. 43° E. 37 $\frac{1}{10}$, to a stake, corner to a 76¼ acre tract, deeded by William Moore and Susannah, his wife, to Thomas C. Moore, where a stone, another corner to said tract and corner to R. P. Finley's tract, bears N. 43° E. 25¼ links; thence, with the line of said Thomas C. Moore tract, S. 44° E. 214½ poles to a stake, corner to a 76¼ acre tract, deeded by said William Moore and Susannah, his wife, to Margery A. Moore, where a maple, 12 inches in diameter, bears S. 6°

W. 39 links; thence, with the line of said tract, S. 44¾° W. 37 1/10 poles to the beginning; containing forty-nine acres and two roods of land, more or less.

4th TRACT.—Also another tract or parcel of land situate in the same county and State, and bounded and described as follows: Beginning at a stone in the middle of the road leading from Wilmington to New Lexington; thence, with the said road, S. 85° E. 76¼ poles to a stone in the northeast line of the original survey; thence, with Moore's survey, N. 42° 30′ W. 54 7/10 poles to a stone or stake in said line of said survey; thence, S. 45° E. 52 2/10 poles to the beginning; containing eight
426 and three-quarters acres of land, be the same more or less, being part of survey No. 994, in the name of Benjamin Temple.

5TH TRACT.—Also another tract or parcel of land, being part of Benjamin Temple's survey, No. 994, and bounded and described as follows: Beginning at a box-elder and an ash, in the northwest line of Temple's survey, north corner of George Hoskins', s'r, land; thence S. 45° W. 118 56/100 poles to a stake; thence N. 45° W. 84 28/100 poles to a stake in the centre of the road; thence N. 45° E. 118 56/100 poles to a stone, corner to William Hoskins' land; thence S. 45° E. 84½ poles to the beginning; containing sixty-two acres, three roods, and twenty-two perches of land, more or less.

6TH TRACT.—Also another tract or parcel of land situate in and being part of Benjamin Temple's survey, No. 994, bounded and described as follows: Beginning at a stone in the centre of the Wilmington road, corner of J. N. Henry's land; thence with said road S. 67° E. 45.26 rods to a stone in the centre of said road, corner to John Powell's land; thence with said road S. 71° E. 20.40 rods to a stone corner of A. Moore's land; thence with his line 47° E. 49 rods to another corner of A. Moore's land; thence with his line 44° W. 61 rods to another corner of A. Moore's land; thence with his said line S. 46° W. 76 rods to the place of
427 beginning; containing twenty-three acres, three roods, and fifteen perches of land, be the same more or less.

7TH TRACT.—Also another tract or parcel of land bounded and described as follows: Beginning at a stone in the Wilmington road, corner to A. Moore's land; thence with his line S. 46° W. 82.88 rods to a stone in the line of John Hoskins' land; thence with his line S. 43° E. 41½ rods to a stake or stone in the line of John Powell's land; thence with his line N. 47° E. 101.80 rods to a stake or stone in the Wilmington road; thence with said road N. 67° W. 45.76 rods to the beginning; containing twenty-four acres and two and one-half perches of land, more or less.

To have and to hold said premises with the appurtenances unto the said John Milner, j'r, and his heirs and assigns, forever. And the said Abram A. Moore, for himself and his heirs, doth hereby covenant with the said John Milner, j'r, and his heirs and assigns, that he is lawfully seized of the premises aforesaid; that the premises are free and clear from all incumbrances whatsoever, except a mortgage for three thousand dollars, given Henry A. Shepherd, dated about 13th July, 1870, and that he will forever warrant and defend the same with
428 the appurtenances unto the said John Milner, j'r, his heirs and assigns, the lawful claims of all persons whomsoever.

Provided, always, and these presents are this condition, that whereas the said Abram A. Moore is indebted to the said John Milner, j'r, the sum of eight thousand and two hundred and ninety-five dollars and twenty-nine cents, ($8,295.29,) due Dec. 25th, 1872, with interest from date until paid, by note dated January 19, 1872; and whereas the said John Milner, j'r, is security for the said Abram A. Moore on a note

of hand given to Joseph C. Worthington for about twelve hundred dollars, dated about the 25th day of December, 1869, bearing ten per cent. interest from date; and whereas the said John Milner, j'r, is security for the said Abram A. Moore on a note of hand given to John B. Moore for about two hundred and seventy dollars, ($270.00,) dated about the 7th day of September, 1871, bearing eight per cent. interest from date. Now, if the said Abram A. Moore, or his assigns, shall pay or cause to be paid these several sums of money, with the interest thereon, as stated above, to the said John Milner or his assigns, then these presents shall be void, otherwise to be and remain in full force in law.

429 In testimony whereof the said Abram A. Moore and Sarah A. Moore, his wife, who hereby releases her right or expectancy of dower in the premises, have set their hands and seals this 20th day of January, A. D. 1872.

ABRAM A. MOORE. [SEAL.]
SARAH A. MOORE. [SEAL.]

Signed and acknowledged in our presence.
E. P. JOHNSON.
THOMAS TYORL.

STATE OF OHIO, *Highland Co., ss:*

Before me, E. P. Johnson, a notary public in and for said county, personally appeared the above-named Abram A. Moore and Sarah A. Moore, his wife, and acknowledged the signing and sealing of the above mortgage to be their voluntary act and deed for the uses and purposes therein mentioned; and the said Sarah A. Moore, wife of said Abram A. Moore, being at the same time examined by me separate and apart from her husband, and the contents of said instrument made known to her by me, she then declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith.

430 In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, this the 20th day of January, A. D. 1872.

E. P. JOHNSON,
[SEAL.] *Notary Public, Highland Co., O.*

Know all men by these presents, that John Milner, j'r, of the county of Highland and State of Ohio, in consideration of five hundred dollars ($500.00) to him paid by George Milner, of the same place, the receipt whereof is hereby acknowledged, does hereby remise, release, and forever quit-claim to the said George Milner, his heirs and assigns, forever, the following premises, situate in the county of Highland and State of Ohio, and described as follows: Beginning at a stake and three bur oaks, corner to Oliver Milner's tract of land, and corner to William Wilkins' tract of land; thence with the line of said William Wilkins' tract N. 10° W. 63 poles to a stone in the edge of the State road; thence N. 12°
431 45' E. 54 poles to an elm, another corner to said Wilkins' tract; thence N. 2° W. 116 poles to a stone, sugar-tree, and two dogwoods, another corner to said Wilkins' tract, in the line of the heirs of Thomas M. Bailey; thence with their line S. 78° W. 126 poles to a stone in said line, corner to Benjamin Barrett's; thence with his line S. 5° E. 162 poles to a stone, corner to said Barrett's, in the line of Oliver Milner's tract; thence with said tract S. 74° E. 57 poles to a bur oak; thence S. 58° E. 30 2/10 poles to a sycamore; thence S. 71° 30' E. 33 3/10 poles to the beginning; containing one hundred and forty acres, be the same more or less.

The above-described premises being on the Rattlesnake Fork of Paint Creek, and a part of a survey of 1,666⅔ acres entered in the name of Severan Teakle, No. 2518.

And all estate, title, and interest of the said John Milner, j'r, either in law or in equity, of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues, and profits thereof; to have and to hold the same to the only proper use of the said George Milner, his heirs and assigns, forever.

In witness whereof the said John Milner has hereunto set his hand and seal this 19th day of November, in the year of our Lord
432 one thousand eight hundred and seventy.

JOHN MILNER. [SEAL]

Signed, sealed, and acknowledged in presence of us.
W'M H. ECKMAN.
LON. ELDER.

STATE OF OHIO, *Highland Co., ss.*

Be it remembered that on the 19th day of November, A. D. 1870, before me, W'm H. Eckman, mayor of Greenfield, personally came John Milner, the grantor in the foregoing deed, and acknowledged the signing and sealing thereof to be his voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

W'M H. ECKMAN,
Mayor of Greenfield, Highland Co., Ohio.

433 Know all men by these presents, that Peter Milner and Mary L. Milner, his wife, of the county of Highland and State of Ohio, in consideration of the sum of ten thousand dollars, to them paid by Abraham A. Moore, of the county of Clinton and State of Ohio, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said Abram A. Moore, his heirs and assigns, forever, the following real estate, situate in the county of Hamilton, in the State of Illinois, and bounded and described as follows: Section number (20,) town number three, (3,) range number seven (7) east, containing six hundred and forty acres, more or less, according to Government survey:

To have and hold said premises, with all the privileges and appurtenances thereunto belonging, to the said Abram A. Moore, and to his heirs and assigns, forever. And the said Peter Milner and Mary L. Milner, his wife, for themselves, and for their heirs, do hereby covenant with the said Abram A. Moore, and his heirs and assigns, that they are lawfully seized of the premises aforesaid; that the said premises are free and clear from all incumbrances whatever, and that they will for-
434 ever warrant and defend the same, with the appurtenances, unto the said Abram A. Moore, and his heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof the said Peter Milner and Mary L. Milner, his wife, who hereby relinquishes her right of dower in the premises, have hereunto set their hands and seals, this 15th day of December, in the year of our Lord one thousand eight hundred and seventy-one.

PETER MILNER. [SEAL.]
MARY L. MILNER. [SEAL.]

Signed, sealed, and acknowledged in the presence of us.
E. P. JOHNSON.
L. HURST.

STATE OF OHIO, *Highland Co., ss:*

Be it remembered that on this 15th day of December, A. D. 1871, before me the subscriber, a notary public in and for said county, personally came the above-named Peter Milner and Mary L. Milner, his wife, the grantors in the foregoing deed, and acknowledged the signing and sealing of the same to be their voluntary act and deed, for the uses and purposes therein mentioned.

435 And the said Mary L. Milner, wife of the said Peter Milner, being at the same time examined by me, separate and apart from her said husband, and the contents of said instrument being by me made known and explained to her, she then declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith, as her voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, on the day and year last aforesaid.

[SEAL.] E. P. JOHNSON,
Notary Public.

Know all men by these presents, that Abram A. Moore and Sarah A. Moore, his wife, of the county of Clinton and State of Ohio, in consideration of the sum of six thousand dollars, to them paid by John Milner, j'r, of Highland County, Ohio, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said

436 John Milner, j'r, and his heirs and assigns forever, the following real estate, situate in the county of Hamilton, in the State of Illinois, and bounded and described as follows, viz:

Section number twenty, (20,) town number three, (3,) range number seven (7) east, containing six hundred and forty acres, more or less, according to Government survey:

To have and to hold said premises, with all the privileges and appurtenances thereunto belonging, to the said John Milner, and his heirs and assigns, forever. And the said Abram A. Moore and Sarah A. Moore, for themselves and their heirs, do hereby covenant with the said John Milner, j'r, and his heirs and assigns, that they are lawfully seized of the premises aforesaid; that the said premises are free and clear from all incumbrances whatsoever, and that they will forever warrant and defend the same, with the appurtenance, unto the said John Milner, j'r, and his heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof the said Abram A. Moore and Sarah A.

437 Moore, his wife, who hereby relinquishes her right of dower in the premises, have hereunto set their hands and seals this 19th day of January, in the year of our Lord one thousand eight hundred and seventy-two.

ABRAM A. MOORE. [SEAL.]
SARAH A. MOORE. [SEAL.]

Signed, sealed, and acknowledged in the presence of—
E. P. JOHNSON.
RUEL BEESON.

STATE OF OHIO, *Highland Co., ss:*

Be it remembered that on this 19th day of January, A. D. 1872, before me, the subscriber, a notary public in and for said county, per-

sonally came the above-named Abram A. Moore and Sarah A. Moore, his wife, the grantors in the foregoing deed, and acknowledged the signing and sealing of the same to be their voluntary act and deed for the uses and purposes therein mentioned.

And the said Sarah A. Moore, wife of the said Abram A. Moore, being at the same time examined by me separate and apart from her said husband, and the contents of said instrument being by me made
438 known and explained to her, she then declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith, as her voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, on the day and year last aforesaid.

E. P. JOHNSON,
Notary Public.

439 In the district court of the United States for the southern district of Ohio.

At the court-house in Hillsborough, Ohio, August 5th, 1873.
In pursuance of the following order of reference made to me, viz:

Order of reference.

In the district court of the United States for the southern district of Ohio.

WM M. MEEK, ASSIGNEE OF ABRAM A. Moore, bankrupt,
vs.
C. M. WALKER AND OTHER CREDITORS OF said bankrupt.

Entry.

The court having carefully examined the petition filed in this case, and the prayer thereof, does order that the same be referred to James H. Thompson, register in bankruptcy for the sixth district of Ohio, with instructions that he shall give due notice by publication for three weeks, weekly, in the following weekly papers, published and in general circulation in said sixth district, namely, "Hillsborough Gazette" and
440 "Clinton County Republican," to all the creditors of said bankrupt, to file their answers and defences, together with all the proofs, before said register, on or before the 15th day of July, A. D. 1873; he will hold a court of bankruptcy in the court-house in Hillsborough, Ohio, and will then and there proceed to hear the testimony adduced by the parties and arguments of counsel, and to determine the priorities of liens among the creditors of said bankrupt.

And he shall make a full report to this court of all his findings, together with the evidence produced by the parties on said hearing, and of all other such matters as may transpire in the premises as may seem to him proper for the investigation of this court.

In witness, the Honl. Philip B. Swing, judge of district court, and the seal thereof, at Cincinnati, the 8th day of April, A. D. 1873.

Attest. THOMAS AMBROSE, *Clerk.*

I caused the following notice to be published in the Hillsborough Gazette and Clinton County Republican, viz:

Notice in bankruptcy.

THE UNITED STATES OF AMERICA,
Southern District of Ohio:

IN THE MATTER OF A. A. MOORE, bankrupt.

441 The creditors of A. A. Moore, a bankrupt, are hereby notified that, in obedience to the requirements of an order of reference made by the district court of the southern district of Ohio, in the case of William M. Meek, assignee of said Abram A. Moore, vs. John Milner, j'r, and others, they are required to file their answers and defences, together with all the proofs, before the undersigned register in bankruptcy for the late 6th congressional district of the southern district of Ohio, on or before the 15th day of July, A. D. 1873; and said creditors are further notified that said register will hold a court of bankruptcy in the court-house in Hillsboro, Ohio, on the 5th day of August, A. D. 1873, and then and there proceed to hear the testimony adduced by the parties, and arguments of counsel, and determine the priority of liens among the creditors of said bankrupt.

Dated May 19th, 1873.

JAMES H. THOMPSON,
Register.

And thereupon, on the day first herein aforesaid mentioned, appeared William M. Meek, the assignee aforesaid mentioned, by his coun-
442 sel, E. M. DeBruin; the defendant, John Milner, j'r, by his counsel, George B. Gardner and C. H. Collins; the defendants, Thomas H. Long, Cyrus M. Walker, and Moore, by their counsel, Sloane and Beeson and William Teltair; and Henry A. Shepherd for himself and counsel for Thomas D. Patton; and the defendants, William Moore and Thomas , by David T. White, their counsel; and the parties having filed all their pleadings, the following request and motion was filed by George B. Gardner and C. H. Collins for John Milner, j'r, viz:

In the district court of the United States for the southern district of Ohio, in chancery.

To the Honl. James H. Thompson, register in bankruptcy, to whom the petition of William M. Meek, assignee of A. A. Moore, bankrupt, vs. C. M. Walker and others, has been referred:

The undersigned, John Milner, j'r, having filed legal objections in the form of demurrers to the reply of C. M. Walker and Thomas H. Long in this case to the answer of said John Milner, j'r, requests that the points made by said demurrers, as shown by the same on file, be ad-
443 journed into the district court for hearing and argument, and that no further steps be taken by the said register in said case the opinion of said court is obtained upon the questions raised by he demurrers and the said matters with said demurrers to said per court, and stay proceedings until the same is heard by said cou

said John Milner, j'r, hereby claiming that said questions are preliminary questions to be settled before the taking of testimony in this cause, and not consenting that the register may pass upon the same, and not waiving any of his rights of appeal or exceptions to any opinion of the district court in cases where such appeal or exceptions are allowed.

He asks that this request be entered on the minutes of said register, and be allowed and certified as aforesaid.

JOHN MILNER, J'R,
Per GEORGE B. GARDNER & G. H. COLLINS,
Attorneys.

Which paper was received and filed as herein above entered on the minutes; but the said register refused to adjourn said cause into the district court upon the papers on file, to which ruling of the register said John Milner, j'r, excepts, and prays that his exceptions may
444 be entered herein, which is done. And thereupon the argument of counsel was commenced on the demurrer of the said John Milner, j'r, to which replies of C. M. Walker and Thomas H. Long to the answer of John Milner, j'r, and said demurrer having been filed, and the arguments of counsel not having been completed, court adjourned until to-morrow morning at 9 o'clock.

JAMES H. THOMPSON,
Register.

At the court in Hillsborough, Ohio, August 6th, 1873.

Court met pursuant to adjournment.

Present, James H. Thompson, register; W. H. Woodrow, clerk; James W. Doggett, messenger.

On motion, E. M. DeBruin, counsel for William M. Meek, assignee, leave was granted to the said William M. Meek to file his replication to the answer of John Milner, j'r, and also his replication to the answer of Thomas H. Long, and to the answer of C. M. Walker. And, on
445 motion of Henry A. Shepherd, like leave was granted to him to file his own answer and the answer of James D. Patton; and, on like motion of James Sloane and William Telfair, attorneys for Thomas H. Long, C. M. Walker, and Samuel J. Moore, the separate answer and reply of the said Samuel J. Moore to the answer of John Milner, j'r, and the separate answer and reply of Thomas H. Long to the answer of said John Milner, j'r, and the separate answer and reply of C. M. Walker to the said John Milner, j'r, are allowed to be filed; all of which foregoing papers are to be considered and treated as filed of the 15th day of July, A. D. 1873. And thereupon this cause came on to be heard, on the arguments of counsel, on the separate demurrer of John Milner, j'r, to the separate answer and reply of Thomas H. Long, and the separate demurrers of John Milner, j'r, to the separate answer and reply of C. M. Walker.

And the arguments of counsel having been heard by the court, on due consideration thereof the court does overrule said demurrers; to which action of the court in refusing to sustain said demurrers and overruling the same, the defendant, John Milner, j'r, by his counsel, excepts, and prays his exceptions may be entered of record, which is accordingly done.

446 Thereupon the court granted leave to John Milner, j'r, to file replies to the answers and replications of the said Thomas H. Long and C. M. Walker forthwith.

In overruling said demurrer the court did not pass judg[illegible] nor take into consideration the priority of liens set up and [illegible] the separate answers of Thomas H. Long and C. M. Walk[illegible] of certain attachments in the court of common pleas of Cli[illegible] Ohio, claimed to have been levied on the real estate of said [illegible] Moore, bankrupt; but, on the contrary, expressly reserved the consid[illegible] eration and decision of the priority of liens, if any be created by the levy of said attachments, until after the alleged charge of fraud, as to the mortgage of John Milner, j'r, set up in his answer, shall have been determined and decided according to the practice of courts in chancery.

Thereupon the court directed counsel to make up an issue to try and decide the question of the alleged fraud as to the mortgage of the said John Milner, j'r; and in order to aid the court in the trial of said question, the deputy marshal attending on the court was ordered to summon a jury of twelve men according to the usages and practice
447 of courts, to be and before said register, at the court-house in Hillsborough, Ohio, on Monday, August 11th, 1873, at 9 o'clock a. m., to try and determine such issues of fact as may then and there be presented to them by said register.

To the order of the register in commanding said jury to be summoned, the counsel for John Milner, j'r, excepted, and prayed that these exceptions might be noted, which is accordingly done. And thereupon, on motion of George B. Gardner and C. H. Collins, court adjourned until Monday, August 11th, 1873, at 9 o'clock a. m.

JAMES H. THOMPSON,
Register.

At the court-house in Hillsborough, Ohio, August 11th, 1873.

Court met pursuant to adjournment.

Present, James H. Thompson, &c.

And thereupon came a jury, to wit: Hugh Swearingen, John A. Trimble, s'r, Joshua Woodrow, James S. Murphy, William J. Herron, Charles Wilson, William C. Barry, James H. Anderson, D. F. Scott, Thomas Ravenscroft, Daniel Mattox, and Lewis McKibben, who
448 being duly sworn the truth to say.

To which array and pannel of jurors C. H. Collins and George B. Gardner objected, and asked their objections to be entered of record on the ground that it was illegally drawn, which challenge to the array was overruled and the jury sworn; to which action of the register the defendant, John Milner, j'r, excepted by his counsel, and prays the exceptions may be entered in the records, which is done.

Thereupon the defendant, John Milner, j'r, asked that the question made by John Milner, j'r, in his cross-petition between him, the said Milner, and the attaching creditors, Long and Walker, as to the validity of the liens of the attachments of Long and Walker, be tried to the jury; but the said register refused to allow said issue to be tried, and ordered the jury to try the validity of John Milner, j'r, mortgage. To which action of the register said John Milner, j'r, excepts, and the court ordered said exceptions to be entered of record, which is done.

This cause came on further to be heard upon the motion of the attorneys of John Milner, j'r, to strike from the files the replication of William M. Meek, assignee, for reasons on file, which motion was overruled;
449 to which action of the register in overruling said motion said John Milner, j'r, by his attorneys, excepted, and prays this his replication be entered on the record, which is done.

Thereupon said John Milner, j'r, filed his demurrer to said replication, said John overruled; to which action of the register in overruling said nary quest he said John Milner, j'r, by his counsel excepts, and prays his and not comay be entered of record, which is done.
waiving any on the counsel for the assignee called the witnesses in his district co proceeded to examine the same before the jury, and, the ex- tra- Co amination of witnesses not having been completed, the court adjourned or until to-morrow morning at 9 o'clock.
er- da

JAMES A. THOMPSON, *Register.*

At the court-house in Hillsborough, Ohio, August 12th, 1873.

Court met pursuant to adjournment. Present, James H. Thompson,
47 register, &c. The same jury as of yesterday came, and not having finished the evidence upon the following issues to them submitted by the court, viz:

450 Whether the deed of mortgage set forth in the pleadings of the parties, executed by the bankrupt, A. A. Moore, to John Milner, j'r, is or is not fraudulent; whether or not the said deed of mortgage referred to was executed for any valuable consideration paid by the said John Milner, j'r; if any consideration was paid, what was the consideration; was or was not said deed of mortgage executed by the said A. A. cl Moore to John Milner, j'r, and accepted by said Milner, with intent to of hinder, delay and defraud the creditors of the said A. A. Moore, or was that it executed for a bona fide consideration and with no purpose to hinder, clai delay, or to defraud the said creditors—
unti On leave of the court, as of yesterday, the following pleadings were
187 filed, to operate and take effect as if filed on the 15th day of July, viz:
in Answer and reply of William W. Moore, j'r; written motion of William M. Meek, assignee, to the answer of Thomas C. Moore; the demurrer of William M. Meek, assignee, to Samuel J. Moore's answer; the demurrer of William M. Meek, assignee, to Silas Routh; the amendments of William M. Meek, assignee, to the reply of John Milner, j'r; the reply of William M. Meek, assignee, to James D. Patton's answer; the
451 motion of William M. Meek, assignee, to the separate answer of Thomas C. Moore. And the examination of witnesses not having been completed the court adjourned until to-morrow morning, at 9 o'clock.

JAMES H. THOMPSON,
Register.

At the court-house in Hillsborough, Ohio, August 13th, 1873.

Court met pursuant to adjournment. Present, James H. Thompson, &c. The same jury as of yesterday came to-day, and the examination of witnesses being resumed, and not having completed the testimony, the court was adjourned until to-morrow morning, at 9 o'clock.

JAMES H. THOMPSON,
Register.

At the court-house in Hillsborough, Ohio, August 14th, 1873.

Court met pursuant to adjournment. Present, James H. Thompson, register, &c. The same jury as of yesterday came to-day, and
452 the examination of witnesses being resumed, and not having been completed, the court adjourned until to-morrow morning, at 9 o'clock.

JAMES H. THOMPSON,
Register.

At the court-house in Hillsborough, Ohio, August 15th, 1873.

Court met pursuant to adjournment. Present, James H. Thompson, register, &c. The same jury as of yesterday came, and the examination of witnesses having not been completed, the assignee offered in evidence the following proof of claims: Henry A. Shepherd for $3,000.00, with interest thereon at the rate of eight per cent. per annum from the 13th day of July, 1871, evidence by a promissory note bearing date July 13th, 1871, and secured by a mortgage on the real estate of said Moore, duly recorded. Samuel J. Moore's proof of claim of $2,405\frac{50}{100}$, claimed to be secured by a lien on the real estate mentioned in the petition, by three several judgements in the court of common pleas of Clinton County, Ohio, on three debts of Abram A. Moore, which existed respectively as follows: first, a promissory note to John Savage,
453 dated November 12th, 1870, for $459\frac{50}{100}$, due on or before the first day of January, 1872, on which Abram A. Moore was principal, and Samuel J. Moore security; a promissory note to Israel Terrel for the sum of $1,189\frac{99}{100}$, payable on the 25th day of April, 1870, on which Abram A. Moore was principal and Samuel J. Moore security, said note transferred by Israel Terrel to J. N. Henry, who afterwards got judgement on the same; a promissory note of the date of the 28th day of October, 1870, to John T. Leverton for $1,339.50, payable on or before the 25th day of December, and signed by Abram A. Moore as principal, and Samuel J. Moore as security. A certified transcript of the records in the case of John F. Leverton against Abram A. Moore, in the court of common pleas of Clinton County, Ohio, showing judgement recovered on the 17th day of June, A. D. 1872, by the plaintiff, against Abram A. Moore as principal, and Samuel J. Moore as surety, for the amount of $1,398\frac{11}{100}$ and costs on the Leverton note above mentioned. A certified transcript from the records of the court of common pleas of Clinton County, Ohio, in the case of John Savage against Abram
454 A. Moore and Samuel J. Moore, showing a judgement recovered by the plaintiff against Abram A. Moore as principal, and Samuel J. Moore as surety, for the sum of $466\frac{61}{100}$, 1st day of April, 1872. On the Savage note, above mentioned, a transcript from the records of the court of common pleas, Clinton County, Ohio, in the case of J. N. Henry against Abram A. Moore, Samuel J. Moore, and Israel Terrel, showing a judgement recovered by the plaintiff on the 1st day of April, 1872, against Abram A. Moore as principal, Samuel J. Moore as security, and Israel Terrel as endorser, for $516\frac{30}{100}$ and costs on the Israel Terrel note, above mentioned. Also, a certified transcript from the records of the court of common pleas of Clinton County, Ohio, in the case of Thomas C. Moore against Abram A. Moore, showing a judgement recovered by the plaintiff against the defendant, on a promissory note signed by said Abram A. Moore, and dated January 5th, 1868, payable to said Thomas C. Moore three years after date, with interest from date, for the sum of three thousand and eight hundred and seventy-seven dollars and costs, recovered on the 29th day of November, A. D. 1872. Also, the
455 list of claims presented and proved against the estate of the said Abram A. Moore in bankruptcy, made out under the direction of the register.

The petition of the said Abram A. Moore in bankruptcy, filed on November 23d, 1872, with all the schedules thereto attached, marked B, filed December 7th, 1872. Also, a certified transcript from the records of the court of common pleas of Clinton County, Ohio, in the suit of Cyrus M. Walker against Abram A. Moore, showing a judgement recov-

ered by the plaintiff against the defendant on the 31st day of December, 1872, for four thousand one hundred and eighty-nine dollars and nineteen cents and costs, upon a written contract of the date of the 23rd day of June, 1870, and also showing certain real and personal property attached in said suit, and the appraised value thereof. Also, a certified transcript from the records of the court of common pleas of Clinton County, Ohio, in the case of Thomas H. Long against Abram A. Moore, on a contract dated 25th day of May, 1870, showing a judgement recovered on said contract by the plaintiff against the defendant, on the 31st day of December, 1872, for the sum of twelve hundred dollars and costs; also showing certain property, real and personal, attached in said
456 suit, and the appraised value thereof.

The counsel for the assignee then offered to introduce the indebtedness of Abram A. Moore, when he filed his petition in bankruptcy, and before that time. The counsel for John Milner, j'r, asked that all evidence of any debts we exclude which do not mature before November 17th, 1870, or were not contracted prior to that date, for the reason that it could only be creditors who had valid claims November 17th, 1870, who could be affected by Moore's conveyance, and counsel for John Milner, j'r, asked that evidence of Thomas H. Long's claim be excluded, because it was a claim for unliquidated damages, and no cause of action accrued upon it until after November 17th, 1870; and also that evidence of C. M. Walker's claim be excluded, because it was a claim for unliquidated damages, and no cause of action accrued thereon until November 17th, 1870. Also any evidence of tax liens for 1871 & 1872; also to exclude all evidence of any judgements obtained in 1872, including Silas Routh's, Samuel J. Moore's, and William Moore's, recovered in 1872, and that the proof of claims made since the bank-
457 ruptcy do not show what said Moore owed bona fide on November 17th, 1870; and also asked that the judgement of Thomas C. Moore be excluded, because it was a judgement taken November 29th, 1872, after the adjudication in bankruptcy in the ordinary form, and it is not a provable debt against the estate of Abram A. Moore; also asks that the judgement of James D. Patton be excluded, because it was a judgement in the ordinary form taken November 27th, 1872, after the adjudication in bankruptcy, and is not a provable claim against the estate of Abraham A. Moore; also to exclude all or any proof of any debts, except actual liquidated claims existing November 17th, 1870, for the reason that it was only the creditors having such actual liquidated claims at that date who have any right to complain of any transfer of his property made at that date; and asks that this request be copied in the records and certified to the judge.

The register overruled the objection, and admitted said testimony; to which counsel for John Milner, j'r, excepted. Counsel for the assignee then offered the petition of Abram A. Moore in bankruptcy, November 23rd, 1872, and schedules thereto attached; and also the amend-
458 ment to schedule B, filed December, 1872; to which counsel for John Milner, j'r, objected, as not showing his indebtedness November 17th, 1870, and not reflecting upon or tending to prove the issues between the assignee and John Milner, j'r, which objection as to the manner of the proof is presumed, but, for the reasons above given, the said register overruled the objection, and admitted said evidence; to which ruling of the register counsel for John Milner excepted, and his exceptions are herein entered.

By counsel it is agreed that the demurrer of John Milner, j'r, to the answer and reply of Samuel J. Moore, and the demurrer of John Milner,

j'r, to the answer and reply of W. W. Moore, shall be treated as filed, and that same objections are embodied in them as in the demurrer to the answer and reply of Thomas H. Long, and the answer and reply of C. M. Walker, and the reply of the assignee, except the objections to the validity of the attachments, and the register overruled said demurrer; to which ruling John Milner excepts, and his exceptions entered; and thereupon the said John Milner, j'r, filed his rejoinder to the answer and replies of said Samuel J. Moore and William W. Moore. And
459 thereupon the court adjourned until Tuesday morning, August 19th, 1873, at 9 o'clock.

JAMES H. THOMPSON,
Register.

At the court-house in Hillsborough, Ohio, August 19th, 1873.

Court met pursuant to adjournment. James H. Thompson, register, &c. This day came the same jury as of the 15th inst., and the examination of witnesses being resumed and the testimony not completed, thereupon court adjourned until to-morrow morning at 8 o'clock.

JAMES H. THOMPSON,
Register.

At the court-house in Hillsborough, Ohio, August 20th, 1873.

Court met pursuant to adjournment. Present, James H. Thompson, register, &c. The examination of witnesses being resumed and not having completed the testimony court adjourned until to-morrow morning at 8 o'clock.

JAMES H. THOMPSON,
Register.

460 At the court-house in Hillsborough, Ohio, August 21st, 1873.

Court met pursuant to adjournment. Present, James H. Thompson, register, &c. The examination of witnesses being resumed and not having been completed, thereupon, upon the motion of George B. Gardner and C. H. Collins, attorneys for John Milner, j'r, whose examination as a witness had been commenced on a previous day of this court, but had not been completed on account of his sickness, and the court being satisfied from the testimony that the said John Milner, j'r, continues to be dangerously sick, it is therefore ordered that this court be adjourned for the purpose of resuming the examination of said John Milner, j'r, as a witness until the 11th day of September, 1873, at 9 o'clock.

JAMES H. THOMPSON,
Register.

At the court-house in Hillsborough, Ohio, September 11th, 1873.

Court met pursuant to adjournment. Present, James H. Thompson, register, &c. On account of the continued sickness of John Mil-
461 ner, j'r, this cause is continued until Monday, September 29th, 1873, at 9 o'clock, a. m.

JAMES H. THOMPSON,
Register.

At the court-house in Hillsborough, O., September 29th, 1873.

Court met pursuant to adjournment. Present, James H. Thompson, register, &c., and the parties by their counsel; and thereupon nine only of the jury appeared, and the parties not being willing to proceed with the said nine jurors, I ordered one to be withdrawn from the box and dismissed the panel. And thereupon, by consent, I proceeded to hear and determine the issues made between the parties on the pleadings hereinbefore set forth, and thereupon the argument was commenced by counsel as follows, to wit: C. H. Collins and George B. Gardner for John Milner, j'r, and William Telfair and E. M. De Bruin in opposition to the claim of said John Milner, j'r; and said arguments having been partially completed and taken under advisement, thereupon court adjourned until to-morrow at 9 o'clock a. m.

JAMES H. THOMPSON,
Register.

462 HILLSBOROUGH, OHIO,
September 30, 1873.

Court met pursuant to adjournment. Present, James H. Thompson, Register, &c. The argument of counsel on the part of John Milner, j'r, was resumed, and having been completed and held under advisement, the argument was commenced on the claim of C. M. Walker and Thomas H. Long *was commenced* by C. H. Collins in opposition thereto, continued by William Telfair in favor of the claims; and during this argument William Telfair moved the court to permit the sheriff of Clinton county, Ohio, to amend his return on the two attachments of C. M. Walker and Thomas H. Long, under which they severally claimed priority of liens, by adding to his return on each attachment, at the conclusion thereof, these words, "the property of the defendant, A. A. Moore;" which motion was overruled. Thereupon the said William Telfair excepted to the ruling of the court in overruling said motion, and asked this his exceptions be noted, is accordingly done; and the said last-mentioned argument having been completed, and the court being fully advised in the premises, does find and adjudge that the mortgage
463 deed executed by A. A. Moore to said John Milner, j'r, dated 19th day of January, 1872, under which, in his petition, the said John Milner, j'r, claims priority of lien for his claim on the premises in the assignee's petition described, was fraudulent and void as against all the other creditors of the said Abram A. Moore, and that no priority of lien was created by such mortgage. It is thereupon ordered by me that the claim of said John Milner, j'r, be postponed, and be placed among the class of claims of general creditors.

To which finding and ruling of the court, in deciding that said mortgage of the said John Milner, j'r, was fraudulent and void, the counsel of the said John Milner, j'r, C. H. Collins and George B. Gardner, excepts, and pray that their exceptions may be noted in this entry, which is accordingly done.

And the court does further find and adjudge that the attachments of Cyrus M. Walker, dated 20th day of December, A. D. 1870, against the defendant, Abram A. Moore, and claimed by him, said Walker, to have been levied by the sheriff of Clinton County, Ohio, on the 21st day of December, A. D. 1870, on the land and premises in the assignee's
464 petition described, and under which attachment and levy the said Cyrus M. Walker claimed priority of lien over other creditors, are both, the said attachment and levy, illegal*ly*, void, and of no effect as to the real estate, and that no priority of liens was created thereby in favor of said Cyrus M. Walker.

It is therefore ordered and adjudged by me that the claim of the said Cyrus M. Walker be postponed and be placed among the class of general creditors. To which finding and ruling of the court, in deciding that said attachment and levy of said Cyrus M. Walker was illegal and void, the counsel, William Telfair, excepted, and prays that his exceptions may be noted in this entry, which is accordingly done.

And the court does further find and adjudge that the attachment of Thomas H. Long, dated 6th day of January, A. D. 1871, against the defendant, Abram A. Moore, and claimed by him, the said Thomas H. Long, to have been levied by the sheriff of Clinton County, Ohio, on the 10th day of January, A. D. 1871, on the lands and premises in the assignee's petition described, and under which attachment and levy the said Thomas H. Long claimed priority of lien over other creditors,
465 both the said attachment and levy are illegal as to the real estate, void and of no effect, and that no priority of lien was created thereby in favor of the said Thomas H. Long. It is, therefore, adjudged by me that the claim of the said Thomas H. Long be postponed and be placed among the class of claims of general creditors.

To which finding and ruling of the court, in deciding that said attachment and levy of Thomas H. Long was illegal and void, the counsel, William Telfair, excepted, and prays that his exceptions may be noted in this entry, which is accordingly done.

And upon further consideration of the claims of all the creditors presented to me, I do further find that the following claims should be preferred liens on the real estate in the assignee's petition described, and should be paid out of the proceeds of the sale thereof in the order as numbered hereafter, to wit:

First, the claim of W'm Moore, s'r, for support	$500 00
Second, the claim of Henry A. Shepherd, mortgage dated July 13th, 1870	$3,000 00
Interest from July 13th, 1870, at 8 %	532 66
Total	3,532 66
Third, the claim of A. A. Moore & wife, homestead	$500 00
466 Fourth, the claim of Sarah J. Moore for her contingent claim in the premises for dower	$1,500 00
Fifth, the claim of Samuel J. Moore, by judgement in the court of common pleas, Clinton Co., O	$477 00
Interest on same one year & 6 mo	42 93
Second, dated April 1st, 1872	527 75
Interest on same	47 49
Third, dated June 1st, 1872	1,403 10
Interest on same	112 24
Total	2,610 51
Sixth, the claim of William Moore, j'r, judgement in Clinton County court of common pleas	$730 67
Interest on same	138 82
	$869 49

I do further find all the following claims are among the class of general creditors' claims, and should be paid out of the proceeds of the sale of said real estate, upon the ratio of an equal percentage, according to the amount:

C. M. Walker, judgement in Clinton County common pleas court, Dec. 7th, 1872	$4,189	19
Interest on same	209	40
	$4,398	59
467 T. H. Long, judgement in Clinton County common pleas court, Dec. 7th, 1872	$1,200	00
Interest on same	60	00
	1,260	00
Judgement of J. N. Henry before C. C. Bowers, J. P., Clinton Co., O	$154	84
Interest on same	44	68
	$169	52
Judgement of Silas Routh before C. C. Bowers, J. P., Clinton County, O	277	37
Interest on same	25	32
	$302	69
Claim of W'm Moore, s'r, note	$863	28
Interest on same at 8 %	69	06
	$932	34
Claim of James Morris, note	$552	67
Interest on same at 8 %	228	41
	$781	08
Claim of Patrick Collins, note	$118	74
Interest on same	$19	34
	$138	08
Claim of Glascock Bro's, acc't	7	50
Interest on same		49
	7	99
468 Claim of A. S. Amberg, acc't	65	87
Interest on same	3	95
Total	$69	82

A. B. Baird's claim, acc't		24 89
Interest on same		3 55
Total		$28 44
Claim of Buckeye Wash. Machine Co		20 00
Interest on same		3 50
Total		23 50
Claim of Joseph Cohn, book acc't		85 32
Interest on same		15 33
Total		$100 65
Claim of C. D. Amberg, book acc't		27 57
Interest on same		2 47
Total		$30 04
Claim of Abram Conard, note		140 00
Interest on same		31 37
Total		$171 37
Claim of Alex. Smith, judgement		70 80
Interest on same		3 33
Total		$74 13
Claim of Sewing Machine Co., note		85 00
Interest on same		15 80
		$100 80
Claim of W'm T. Swann, book acc't		15 00
Interest on same		1 00
		$16 00
469 Claim of W'm P. Miller, account		$4 92
Interest on same		1 45
		$6 37
Claim of P. A. Arthur, account		$3 70
Interest on same		26
		$3 96
Claim of John Milner, j'r		$10,103 93
Interest on same		425 94
		$10,529 87

It is now therefore ordered and directed by me that the assignee, William M. Meek, shall proceed to appraise the real estate in his petition described of Abram A. Moore, in the same manner as real estate is appraised under execution by the laws of the State of Ohio, and that he shall proceed to sell the same at New Vienna, Clinton County, Ohio, in front of the drug-store of Johnson and Goode, after thirty days' public notice thereof, published in one newspaper printed at Wilmington, Ohio, and one newspaper printed at Hillsborough, Ohio, to be selected by said assignee, and in such parts and parcels, or as one farm, as may in the judgment of said assignee *may* seem best for the interest of all the creditors, at no less than two-thirds of the appraised value thereof.

470 But if said assignee, in the exercise of his best discretion, deems it best for the interest of the creditors to sell any part, or the whole of the said real estate, in his petition described, at private sale, he is hereby authorized to do so, but in either event said premises, whether sold at public or private sale, or in several parts, or as one farm, the same shall not be sold for less than two-thirds the appraised value thereof, on the following terms, to wit: One-third cash in hand, one third in one year from the day of sale, and one-third in two years from the day of sale.

The deferred payments to bear interest thereon at the rate of six per cent. per annum, and to be secured by mortgage on the premises so sold; and the said assignee is further hereby directed and ordered to pay out of the proceeds of the sale of said real estate—.

First. All the costs of these proceedings, to wit:

James H. Thompson, register and referee.

W. H. Woodrow, as clerk.

James W. Doggett, dep. U. S. marshal.

And to the witnesses the sum of .

And to the jurors the sum of .

As may be hereatter ordered and directed by the Honl. Philip

471 B. Swing, judge of the district court for the southern district of Ohio.

Second. The said assignee shall then pay out of the proceeds of the sale of said real estate the preferred claims, hereinbefore designated, in the order specified herein, subject, however, to any modification or change as to such preferred claims as the said Honl. Phillip B. Swing, judge as aforesaid, may think proper to make.

Third. After the distribution of the proceeds of said real estate as aforesaid directed to be paid and distributed, the said assignee shall, out of the balance of the proceeds of said real estate, pay to the class of general creditors an equal percentage of their several claims, in proportion to the amount thereof. And the said assignee, William M. Meek, as aforesaid shall make report of his doings under this order on or before the 1st day of February, A. D. 1874. And it is further ordered and adjudged that the said William M. Meek, assignee as aforesaid, shall sell and dispose of the tract of land of two hundred and forty acres in the county of Dent, in the State of Missouri, in such man-

472 ner and such terms as in his judgment may seem most expedient, for the benefit of the creditors of the said Abram A. Moore, bankrupt; and this case is continued for further consideration until December 1st, 1873.

DECEMBER 1*st*, 1873.

And now at this day it appearing from the transcript of the record

from the court of common pleas of Clinton County, Ohio, wherein Cyrus M. Walker, one of the creditors hereinbefore mentioned, was plaintiff, and the bankrupt, Abram A. Moore, was defendant, caused his attachment issued in said action to be levied on certain personal property, on the 21st day of December, A. D. 1870, which was valued by the sheriff and appraisers at the sum of ten hundred and sixty dollars, ($1,060.00,) and which said property is specifically described in the undertaking, on said last-mentioned day executed by the bankrupt, Abram A. Moore, with Samuel Moore, one of the preferred creditors hereinbefore mentioned, and which undertaking and bond was executed to the plaintiff, Cyrus M. Walker, in the sum of one thousand and sixty dollars, conditioned that said property should be forthcoming to answer the
473 judgment of the court in said action, or in default thereof that we will pay the said Cyrus M. Walker, the said sum of $1,060.00, the appraised value of said goods and chattels, and the sheriff of Clinton County, in his return of said attachment, said that he delivered to the said Abram A. Moore the said goods and chattels found in his possession, taking his undertaking in the sum of ten hundred and sixty dollars, with Samuel Moore as his security, for the forthcoming of the same; which undertaking, properly indorsed, was returned.

And it also appears from the transcript of the record from the court of common pleas of Clinton County, Ohio, wherein Thomas H. Long, one of the creditors hereinbefore mentioned, *and* was plaintiff, and the bankrupt, Abram A. Moore, was defendant, caused his attachment issued in said action to be levied on the 10th day of January, A. D. 1871, on the same personal property which was mentioned and described in the attachment of said Cyrus M. Walker, and also other personal property of the bankrupt, exceeding in value that levied upon under the attachment of said Walker by the sum of sixty five dollars, all of which
474 was valued by the sheriff and appraisers at the sum of eleven hundred and twenty-five dollars, which said property is specifically described in the undertaking on said last-mentioned day executed by said bankrupt, Abram A. Moore, with Samuel Moore, one of the preferred creditors hereinbefore mentioned, and which undertaking and bond was executed to the plaintiff, Thomas H. Long, in the sum of eleven hundred and twenty-five dollars, conditioned that said property should be forthcoming to answer the judgement of the court in said action, or in default thereof that we will pay the said Thomas H. Long the said sum of $1,125:00, the appraised value of said goods and chattels. And the sheriff of Clinton County, in his return, says: "And I did also, the 10th day of January, A. D. 1871, attach the following goods and chattels in my hand, under an order of attachment issued in said action of the said C. M. Walker, plaintiff, against Abram A. Moore, defendant, and to the return of said reference is had, and I also attached, on the same day, in the presence of Allen Dennis and B. F. Bowers, the following described goods and chattels not attached in the aforesaid
475 action of C. M. Walker against A. A. Moore, and in connection with the said Allen Dennis and G. F. Bowers, two freeholders of said county, made inventory and valuation, which is herewith returned, to wit: One brood-sow, one shoat, one cutting-box, one hay-fork and rope, one road-wagon, one red heifer, and one bull, and the said goods and chattels found in the possession of the said A. A. Moore delivered the same to A. A. Moore, taking his undertaking in the sum of eleven hundred and twenty-five dollars, with Samuel Moore as his security, for the forthcoming of the same; which undertaking, properly

indorsed, is herewith returned; and I also delivered a certified of this writ to Abram A. Moore.

Given under my hand and seal this 19th day of January, A. D. 1871.

J. L. HACKNEY, *Sheriff*,
By P. M. STUMATS, *Deputy*.

And it being agreed by the counsel of all parties, and the representation of the assignee, that all the personal property, goods and chattles which were levied on and seized by the sheriff of Clinton County, Ohio, under said attachment of Cyrus M. Walker and Thomas H. Long,
476 were sold and disposed of and used up by the bankrupt, Abram A. Moore, for his own use and benefit, by the consent and with the knowledge of Samuel Moore, long prior to the obtaining of said judgements of the said Cyrus M. Walker and Thomas H. Long, and that none of said goods and chattles ever came into the possession of the assignee in this case:

It is therefore ordered by me, on motion, that J. W. Quinby, attorney for Samuel J. Moore, that this cause be continued until the 19th day of January, A. D. 1874, to hear and determine the merits of the motion made for written reasons on file to dissolve the aforesaid attachments.

JANUARY 19*th*, A. D. 1874.

This day appeared before me J. W. Quinby, attorney for Samuel J. Moore, and Ulric Sloan, attorney for Thomas H. Long and Cyrus M. Walker, and William M. Meek, assignee, for himself, and the motion heretofore made to dissolve the attachments of the said Thomas H. Long and C. M. Walker, by J. W. Quinby for Samuel J. Moore,
477 was fully argued by counsel, and after consideration thereof the said motion was overruled; to which opinion of the court in overruling said motion the said Samuel J. Moore, by his counsel, J. W. Quimby, excepted and prayed that this, his exception, be noted; it is accordingly done.

Thereupon this cause came on further to be heard, by consent of the parties aforesaid mentioned, upon the questions of the liabilities and obligations of the said Samuel J. Moore severally to the said Cyrus M. Walker and Thomas H. Long, and the several undertakings executed by him in the several attachments proceedings of the said Cyrus M. Walker and Thomas H. Long, hereinbefore recited, for the delivery of the personal property in the said attachment proceedings hereinbefore mentioned.

And after hearing the arguments of counsel, the register does find and adjudge that the said Samuel J. Moore, by virtue of the undertakings executed by him, is indebted to the said Cyrus M. Walker in the sum of ten hundred and sixty dollars, and that the said Samuel J. Moore, by virtue of the undertaking executed by him, is indebted
478 to Thomas H. Long in the sum of eleven hundred and twenty-five dollars.

And this cause further coming on to be heard on the motion of the said Cyrus M. Walker and Thomas H. Long, by their counsel, that they should be severally subrogated and substituted to the extent of the several sums, found as aforesaid due to each of them as preferred creditors, in place of the said Samuel J. Moore, hereinbefore found to be a preferred creditor to the amount of twenty-six hundred and ten dollars and fifty-one cents, which motion was resisted J. W. Quimby, attorney for Samuel J. Moore, and was argued by counsel, the register does adjudge and order that the said Cyrus M. Walker and Thomas H.

Long shall be severally substituted in the place of said Samuel J. Moore as preferred creditors, to the extent of the several amounts so as aforesaid found due to each of them, with interest from September 30th, 1873, the date of the finding of the amount due the said Samuel J. Moore; and that the said Samuel J. Moore shall be preferred to the footing of the general creditors to the extent of the aggregate amount of the said claims of the said C. M. Walker and Thomas H. Long, to wit, the
479 sum of twenty-one hundred and eighty-five dollars, ($2,185.00,) with interest from the 30th day of September, A. D. 1873; to which finding and judgement of the register as to the amounts adjudged to be due from the said Samuel J. Moore severally to the said Cyrus M. Walker and Thomas H. Long, and as to the subrogation and substitution of the said Cyrus M. Walker and Thomas H. Long as preferred creditors in the place of Samuel J. Moore, by his counsel excepts and asks that this his exception shall be noted on the docket; which is accordingly done.

JAMES H. THOMPSON,
Register.

JANUARY 19*th*, 1874.

The assignee, William M. Meek, in the foregoing case, having returned into my office a report of his proceedings and the sale of the real estate in his petition described, except the tract of two hundred and forty acres in Dent County, Missouri, in pursuance of an order made by me in the premises on the 30th day of September, A. D. 1873, which was issued to him on the day of , A. D. 1873, and having fully examined all his proceedings, and the sale of said real estate
480 of said bankrupt, and finding the same to be regular in all respects, all of said proceedings under said order and said sale of said real estate, are hereby approved and confirmed.

And it is further ordered by me that said assignee make and execute deeds to the several purchase's of said real estate in pursuance of the command of said order.

And it appearing to me that the two hundred and forty acres of land in Dent County, Missouri, and described in said petition, remain unsold, that said assignee shall proceed to sell said last-mentioned tract of land on the best terms he can; in his judgment, obtain.

JAMES H. THOMPSON,
Register.

JANUARY 19*th*, 1874.

This cause coming on further to be heard, upon the equitable taxation of costs, and the register finding that the fees of witnesses summoned by said Cyrus M. Walker and Thomas H. Long amount to the sum of thirty-eight dollars and thirty cents, and that the quarter
481 part of the expense of the investigation of the order of reference were created by them and the said John Miller, j'r, in the proceedings under the order of reference, it is therefore finally ordered that they shall jointly the said witness-fees and one hundred dollars of the general expense, in all the sum of one hundred and thirty-eight dollars and thirty cents, as a part of the general costs, which is to be retained by the assignee out of the amounts of money, in equal proportion, ordered to be paid to them.

And in appearing that the fees of witnesses summoned by John Milner, j'r, amounts to the sum of seventeen dollars and t'enty-five cents, ($17.25,) it is therefore finally ordered that he shall pay the witness-

fees and one hundred dollars to the general expenses, in all the sum of one hundred and seventeen dollars and twenty-five cents, as a part of the general costs, which is to be retained by the assignee out of the amount ordered to be paid him.

JAMES H. THOMSON,
Register.

482 I do hereby certify that the foregoing is a true transcript from my docket of all orders and decisions made by me in the foregoing case.

February 26th, 1874.

JAMES H. THOMPSON,
Register.

In the district court of the United States for the southern district of Ohio.

WM M. MEEK, ASSIGNEE OF ABRAM A. Moore,
vs.
C. M. WALKER, JOHN MILNER, J'R, ET AL.

Now come the defendant John Milner, j'r, and here files his exceptions to the report of the register, James H. H. Thompson, heretofore filed in this cause, on the priorities of liens, &c., in pursuance of reference from this court made April the 8th, 1873.

483 1st. Because there was no sufficient bill filed by the said assignee in bankruptcy in this cause upon which to base or qualify the proceedings had by and before the register as reported by him.

2nd. Because the said register had no jurisdiction to hear evidence concerning or determine the validity of the deed from Moore to Milner, made November the 17th, 1870, nor of the validity of the deed from Milner to Moore, made January 19th, 1872, nor of the mortgage made by Moore to Milner, January the 20th, 1872, because each and all of the said conveyances were made more than six months before the petition in bankruptcy was filed.

3rd. Because more than two years had elapsed from the time the deed from Moore to Milner was made before the filing of the petition in bankruptcy in this cause.

4th. The said John Milner further excepts to the report of the register because the same is not supported nor warranted in whole or

484 in any part thereof by the evidence as taken and heard before him; and because the same is in the whole and every part thereof contrary to the evidence and the law of the case.

5th. Because the order of reference to him in this cause did not authorize him to pass upon the validity of the said deeds and mortgage, or upon either of them, or to take evidence in relation thereto.

485 *Decree.*

In the district court of the United States for the southern district of Ohio.

WM M. MEEK, ASSIGNEE OF ABRAM A. Moore, bankrupt,
against
C. M. WALKER AND OTHERS, CREDITORS OF said bankrupt.
} Order of reference.

This cause came on to be heard on the petition of the assignee, William M. Meek, filed in this court, and the answers and pleadings of all

the defendants filed before James H. Thompson, register, acting as master commissioner under an order of reference made to him by this court the 8th day of April, A. D. 1873, in the above cause, and also upon all the evidence and exhibits produced by all parties upon the hearing of said cause before said register, acting as master commission' as aforesaid, and also upon the written report and printed analysis of said report by said register, acting as said master commissioner as aforesaid.

And thereupon all parties interested in this cause appeared before this court by their counsel and waived all objections to all informality and irregularity of pleadings and proceedings before said register,
486 except John Milner, j'r, who, in waiving said objections, expressly reserved whatever rights he might have to take additional testimony in his behalf in the event of the register's report being not confirmed by this court on account of any such informality or irregularity, and proceeded to a final hearing of all the questions wherein they were interested. Upon the motion of the assignee to confirm the report of said register, on the date of January 19th, 1874, and the exceptions of all other parties to said report, *and* was fully argued by counsel of all the parties interested, and the court having heard all the arguments of counsel, and examined the report of the said register, and of all his actions and doings in said premises, and being fully advised in the premises, does confirm, approve, and establish the whole report of said register, except as follows, to wit: First, the court allows the claim of Thomas J. Moore, presented by David T. White, one of the counsel, after the report of the register in this case, be accepted by the assignee and classed and placed among the claims of general creditors, to be paid out of the general fund (if any there be) in proportion to other
487 general creditors. Second, the court finds that the claim of Thomas H. Long, ordered by the register to be paid out of the preferred claim of Samuel J. Moore, ought not to have been so ordered and directed, and is therefore revised, except as to the sum of sixty-five dollars, the difference between the amount of the delivery-bond executed by the said Samuel J. Moore in the attachment proceeding, Cyrus M. Walker, and the attachment proceeding the said Thomas H. Long mentioned in the report of said register.

To which said finding and decisions of this court in overruling the decisions of said register in favor of the said Thomas H. Long, he, the said Thomas H. Long, excepts and prays that an appeal may be allowed him to the circuit court of the United States for the southern district of Ohio, which said appeal is hereby granted to him, according to the provisions *according to* the bankrupt act of the U. S., upon the execution of an appeal bond w*ritte*n thirty days from the entry of this order, with sufficient security, satisfactory to the clerk of this court, in the sum of $1,000.00 *dollars*. Also, to which said finding and decision of
488 this court, in sustaining the report of said register and master commissioner aforesaid as to the claim of John Milner, j'r, and in placing the same among the class of general creditors, he, the said John Milner, also excepts, and prays *that* and appeal to the circuit court of the United States for the southern district of Ohio; which said appeal is hereby granted to him, according to the provisions of the bankrupt acts of the United States, upon the execution by him of an appeal-bond in thirty days from the entry of this order, with sufficient security, to the satisfaction of the clerk of this court, in the sum of $3,000.00. Also, to which said finding and decision of this court, in sustaining the report of said register and master commissioner afore-

said as to the claim of Cyrus M. Walker, and in placing the same among the class of general creditors, he, the said Cyrus M. Walker, also excepts, and prays *that* an appeal to the circuit court of the United States for the southern district of Ohio; which said appeal is hereby granted to , according to the provisions of the bankrupt act of the United States, upon the execution by him of an appeal-bond in thirty days from the entry of this order, with sufficient security, to the
489 satisfaction of the clerk of this court, in the sum of fifteen hundred dollars.

The said assignee is hereby directed, after the payment of all costs and expenses, and fees ordered to be paid to the said register and master commissioner as aforesaid, and the payment of the claim of taxes and Henry A. Shepherd, to retain in his hands so much of the estate of the bankrupt A. A. Moore (if so much there be) as will be equal to the amount of all or any of the appeal-bonds hereinbefore ordered to be executed.

It is further finally ordered that the said assignee shall pay out of the funds in his hands all the fees, costs, and expenses reported by said register, as master commissioner as aforesaid, to have accrued and be due on the proceedings before him; and he shall also pay out of said funds the said register and master commissioner aforesaid for all his services, reports, and publications of his report, and for his services in the case of the assignee against Peter Milner, the sum of five hundred and thirty-five dollars, as a part and parcel of the costs and expenses of these proceedings, and that he shall also be allowed to retain in
490 his own hands, as attorneys' fees for attorneys employed in these proceedings, the sum of $450.00, as a part and parcel of the costs and expenses of these proceedings.

And afterwards, to wit, on the eighth day of September, in the year of our Lord one thousand eight hundred and seventy-four, came John Milner, j'r, and filed in the clerk's office of the court aforesaid his certain appeal in the said cause; which said bonds in the words and figures following, to wit:

Bond of John Milner, j'r.

Know all men by these presents that we, Peter Milner and Moses Milner, of Highland County, in the State of Ohio, are held firmly bound unto William M. Meek, assignee of Abram A. Moore, a bankrupt, in the sum of three thousand dollars, to be paid to the said William M. Meek, assignee, for the payment of which, well and truly to be made, we do hereby, jointly and severally, bind ourselves, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 8th day of September, A. D. 1874.

Whereas John Milner, j'r, has obtained an allowance of an appeal from the district court of the United States for the southern
491 district of Ohio, in a cause wherein the said John Milner et al. are defendants, and the said William M. Meek, assignee, is plaintiff, in which a decree was entered at the April term, A. D. 1874, in favor of the said plaintiff; and the said defendant praying an appeal to the circuit court of the United States, an appeal was allowed upon said defendant filing an appeal-bond in the sum of three thousand dollars: Provided, however, that if the said John Milner, j'r, in the appeal aforesaid shall establish and maintain his claim in the case aforesaid before the circuit court of the United States to a greater extent than

the same was allowed in the court below, then this obligation to be void; otherwise to remain in full force and virtue for the costs of said appeal, as witness our hands and seals the day and year aforesaid.

PETER MILNER. [SEAL.]
MOSES MILNER. [SEAL.]

Security approved by me, and bond filed September 7th, 1874.

JAMES H. THOMPSON,
Register.

492 And afterwards, to wit, on the t'enty-first day of September, in the year last aforesaid, came Cyrus M. Walker and filed in the clerk's office of the court aforesaid his certain appeal-bond in the said cause; which said bond is in the words and figures following, to wit:

Appeal-bond of C. M. Walker.

Circuit court of the United States for the southern district of Ohio.

W'M M. MEEK, ASSIGNEE OF A. A. MOORE, bankrupt, *against* C. M. WALKER AND OTHERS, CREDITORS OF said bankrupt.	Undertaking in appeal.

Know all men by these presents that J. C. Walker, and Jonathan Wall, and Robert McMillan, of Wilmington, of the county of Clinton, and State of Ohio, a*m* held and firmly bound unto W'm M. Meek, assignee as aforesaid, in the sum of fifteen hundred dollars, to be paid to the said W'm M. Meek, or his successor, to which payment well and truly to be made I bind myself, heirs, executors, and administrators, firmly by these presents. Signed and sealed with my seal this day of September, A. D. 1874.

Whereas the said Cyrus M. Walker hath prosecuted his appeal to the circuit court of the United States for the southern district of Ohio from the judgement rendered in the above-entitled action by the district court of said district:

493 Now, therefore, the condition of this obligation is such that if the above-named Cyrus M. Walker shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea therein, then this obligation to be void; otherwise to remain in full force and virtue in law.

C. M. WALKER. [SEAL.]
JONATHAN WALL. [SEAL.]
ROBT McMILLAN. [SEAL.]

And afterwards, to wit, on the twenty-fourth day of September, in the year last aforesaid, came Thomas H. Long, and filed in the clerk's office of the court aforesaid his certain appeal-bond in said cause; which said bond is in the words and figures following, to wit:

Know all men by these presents that we, Thomas H. Long and Absalom Adams, both of Highland County, State of Ohio, are held and firmly bound unto Wil iam M. Meek, assignee of Abram A. Moore, a bankrupt, in the sum of one thousand dollars, for the payment of which, well
494 and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by

these presents. Sealed with our seals, and dated this twenty-fourth day of September, A. D. 1874.

Whereas the said Thomas H. Long has obtained the allowance of an appeal from the district court of the United States for the southern district of Ohio, in a cause wherein the said William M. Meek, assignee, is complainant, and John Milner, Thomas H. Long, et als., are defendants, in which decree was entered at the April term 1874, and the said Thomas H. Long praying and appeal to the circuit court of the United States for said district, an appeal was allowed said defendant upon filing an appeal-bond in the sum of one thousand dollars:

Now, therefore, the condition of this obligation is such that if the said Thomas A. Long shall maintain and establish his claim in the cause before said circuit court to a greater extent than the same was allowed in said district court, then the above obligation to be void; otherwise to remain in full force and effect in law.

THOMAS H. LONG. [SEAL.]
ABSALOM C. ADAMS. [SEAL.]

In presence of—
T. AMBROSE.

495 UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, Thomas Ambrose, clerk of the district court of the United States for the southern district of Ohio, hereby certify the foregoing to be truly and correctly copied from the record and files in the case of William M. Meek, assignee of Abram A. Moore, a bankrupt, vs. C. M. Walker et al., as the same are kept in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 6th day of November, A. D. 1874, and in the 99th year of the Independence of the United States of America.

Attest:
[SEAL DIS'T C'T U. S., S. D. O.] THO'S AMBROSE,
Clerk U. S. Dis't Ct, S. D. O.

496 And afterwards, to wit, on the eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy-four, an entry was made upon the journal of our said court in the words and figures following, to wit:

Entry.

John Milner, j'r, et al., vs. W'm M. Meek, assignee. Now come the several parties in interest, by their respective attorneys, and waiving any irregularity which might exist in this proceeding by reason of not having been brought on a petition for review instead of by appeal, hereby consent that the transcript of the record of the district court herein filed be treated as such bill of review, in case it should be held to be necessary.

And afterwards, to wit, on the nineteenth day of November, in the year last aforesaid, an entry was made on the journal of the court aforesaid in the words and figures following, to wit:

Entry.

John Milner, j'r, C. M. Walker, and Thomas H. Long, ads. William M. Meek, assignee. Appeal. This day this cause came on to be heard on the transcript of the record of the district court of the United States for the

southern district of Ohio, which was brought into the circuit court of the United States for said district upon an appeal from the findings and
497 decrees of the said district court, and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed that the decree of the said district court in this cause be, and the same is in all respects hereby, affirmed. And it is further ordered that this cause be, and the same is hereby, remanded to the said district court for such further proceedings to be had therein in conformity with the opinion of this court. And thereupon the said John Milner, j'r, by his counsel, prays an appeal to the Supreme Court of the United States, which is allowed by the court, and the amount of his appeal-bond is fixed at $1,000, to be given within sixty days, with sufficient security, to the satisfaction of the clerk of this court.

And afterwards, to wit, on the nineteenth day of December, in the year last aforesaid, came the said John Milner, j'r, and filed in the clerk's office of the said court his certain appeal-bond; which said bond is in the words and figures following, to wit:

Bond.

Supreme Court of the United States.

JOHN MILNER, J'R, ET AL., *ads.* WILLIAM M. MEEK, ASSIGNEE OF ABRAHAM A. Moore, a bankrupt.

Know all men by these presents that we, John Milner, j'r, Peter Milner, and Moses Milner, of the southern district of Ohio, are held and firmly bound unto the said William M. Meek, assignee, and his successors, in the sum of one thousand dollars, to be paid to the said
498 William M. Meek, assignee, or his successors, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this 18th day of December, A. D. 1874.

Whereas the above-named John Milner, j'r, hath prayed an appeal, and been allowed the same, to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named John Milner, j'r, shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN MILNER, J'R. [SEAL.]
PETER MILNER. [SEAL.]
MOSES MILNER. [SEAL.]

Sealed and delivered in presence of—
SOLOMON BARRETT.
GEORGE MILNER.

And on which said bond is the following endorsement:

Approved:

THO'S AMBROSE, *Clerk.*

499 UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, Thomas Ambrose, clerk of the circuit court of the United States for the southern district of Ohio, hereby certify the foregoing to be a true and correct transcript of the record and proceedings in the case of John Milner, j'r, ads. W'm M. Meek, assignee, as the same are kept in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 26th day of February, A. D. 1875, and in the 99th year of the Independence of the United States of America.

Attest:
[SEAL.]

THO'S AMBROSE,
Clerk U. S. C. C., S. D. O.

(Indorsement on cover:) No. 54. John Milner, j'r, vs. appellant, William M. Meek, assignee in bankruptcy of Abraham A. Moore. S. Ohio C. C. U. S. Filed 2d March, 1875.

Robert Clarke & Co., Printers, Cincinnati, O. (*Aug. 1877.*

Supreme Court of the United States.

John Milner, Jr.,
Appellant,

vs.

William M. Meek, Assignee in Bankruptcy of Abram A. Moore,
Appellee.

BRIEF FOR APPELLANT.

J. B. FORAKER,
Of Counsel for Appellant.

Robert Clarke & Co., Printers, Cincinnati, O. [*Aug. 1877.*

Supreme Court of the United States.

John Milner, Jr.,
Appellant,

vs.

William M. Meek, Assignee in Bankruptcy of Abram A. Moore,
Appellee.

BRIEF FOR APPELLANT.

The question in this case is as to the validity of a mortgage, given by Abram A. Moore, and wife, to John Milner, Jr., on certain lands in Clinton county, Ohio, dated January 20, 1872, and to secure the payment of a note from Moore to Milner, for the sum of $8,295.29, and to indemnify Milner against loss, as surety for Moore, on two certain notes in the mortgage described, amounting to $1,470, making the total consideration of the mortgage, $9,765.29.

(*See copy of the mortgage on page* 156 *of the printed record.*)

The facts leading to and surrounding the giving of this mortgage, and the bringing of this case into this court, are as follows:

Prior to the 17th day of November, 1870, Abram A. Moore was the owner of the lands described in the mortgage.

On that day, Nov. 17, 1870, he and his wife conveyed the same, by proper deed, to John Milner, Jr.

(*See copy of deed on page* 150 *of record.*)

The consideration for this conveyance was adequate, being $21,900, the full value of the land.

Milner paid for the land by canceling an indebtedness of Moore to him of $4,000; assuming a $3,000 mortgage to Henry A. Shepherd, on a portion of the premises conveyed, and by giving his notes, one for $10,000, due December 25, 1870, and another for $4,900, due December 25, 1871.

(*See deposition of John Milner, Jr., on page* 135 *of the printed record.*)

In the Spring of 1870, two suits for damages had been commenced against Abram A. Moore, by one Townsend, for an alleged assault by Moore upon Townsend's wife, with intent to commit a rape, which suits, as well as a criminal prosecution on the same account, were still pending at the time of the conveyance from Moore to Milner, Nov. 17, 1870.

It also appears from the testimony, that prior to the conveyance, Moore had contracted with Cyrus M. Walker, and Thomas H. Long, for the purchase of some hogs to be delivered; on which contracts, it was apparent at the time of the conveyance, he would suffer considerable loss.

(*See deposition of John Milner, Jr., on page* 138 *of the printed record.*)

The difficulties growing out of the alleged assault

with intent to commit a rape, resulted in a fine of $25 and costs, so far as the criminal prosecution was concerned.

(*See deposition of Henry A. Shepherd, on page* 105 *of the printed record.*)

The civil suits for damages have never been brought to trial, so far as the testimony discloses, and such is the fact.

Shortly after the conveyance from Moore to Milner, a number of suits were brought against Moore. Among others, Cyrus M. Walker and Thos. H. Long, commenced suits for damages for the violation by Moore of his hog contracts with them.

Long and Walker both sued out attachments, on the ground that Moore, by the conveyance to Milner, had disposed of his property with intent to defraud his creditors, and procured them to be levied on the lands conveyed to Milner.

In neither one of these suits had any judgment been obtained when Moore was adjudged a bankrupt. In both cases, for the purpose of liquidating the amounts of their respective claims, the plaintiffs were allowed by the Bankrupt Court to proceed to judgment in the State Court.

On the 19th day of January, 1872, John Milner, Jr., and wife, reconveyed the lands that had been deeded to him as stated, on the 17th day of November, 1870, to Abram A. Moore, for the *expressed* considera-

tion of $16,000, but the actual consideration was $21,900.

At the same time (January 19, 1872), Moore and wife executed and delivered to Milner a mortgage upon the same lands to secure the payment to Milner of a note of even date, of Abram A. Moore, for the sum of $8,295.29, and to secure Milner from loss as surety for Moore on two certain notes in the mortgage described, amounting to the sum of $1,470, in all $9,765.29.

By mistake, the consideration of this mortgage was not inserted, and the omission not being discovered until after the mortgage was placed on record, another mortgage exactly like it, except that the consideration was inserted, was executed on the 20th day of January, 1872, and duly recorded, to take the place of the one executed on the day previous, as above stated.

(*See deposition of John Milner, Jr., on page* 136; *also deposition of Eli P. Johnson, on page* 111 *of the record.*)

This mortgage, so executed on the 20th day of January, 1872, is the mortgage in controversy in this case. defective mortgage

(*See copy of* ~~same~~ *on page* 154 *of the record.*)

After the reconveyance by Milner to Moore, and after the mortgage in controversy had been given and recorded, to wit, at the February Term, A. D. 1872, of the Common Pleas Court of Clinton county, Ohio,

three certain judgments were rendered against Abram A. Moore, as principal, and Samuel J. Moore, as surety, which Samuel J. Moore, as such surety, was afterward required to and did pay.

(*See answer of Samuel J. Moore, on page* 11 *of the printed record.*)

At the November Term, 1871, of the Common Pleas Court of Clinton county, Ohio, a judgment was rendered against Abram A. Moore, as principal, and Wm. W. Moore, Jr., as surety, for $730.62, and costs of suit, which Wm. W. Moore, Jr., as such surety, was afterward required to and did pay.

(*See answer of Wm. W. Moore, Jr., on page* 34 *of the printed record.*)

On the 23rd day of November, 1872, more than two years after the original conveyance from Moore to Milner, and more than ten months after the reconveyance by Milner to Moore, and the giving of the mortgage in controversy, Abram A. Moore was declared a bankrupt.

On the 14th day of March, 1873, Wm. M. Meek, as assignee in bankruptcy of Moore, filed his petition in the District Court in bankruptcy, describing the real estate covered by the mortgage in controversy, and setting out that John Milner, Jr., Cyrus M. Walker, Thos. H. Long, Samuel J. Moore, William W. Moore, Jr., and quite a number of others claimed to have some interest in or lien upon said lands; and also that Wm. Moore, Sr., claimed a lien upon the

third tract described by reason of an agreement with Abram A. Moore relating to his support, which he estimated to be of the value of $500, and praying that all said parties might be made defendants and be required to answer and set up liens, and that the same might be adjusted and the real estate sold.

(*See copy of assignee's petition on page* 1 *of the printed record.*)

Thereupon the District Court ordered the matter referred to James H. Thompson, Register, etc., with instructions for all answers, defenses, etc., to be filed before him, and for him to hold a Court of Bankruptcy at the court house in Hillsboro, Ohio, and hear testimony, determine priorities, etc.

(*See order of reference on page* 6 *of the printed record.*)

In the Court held by the Register in pursuance of this order of reference, John Milner, Jr., and all the other parties named above, *except Wm. Moore, Sr.*, appeared and answered the petition of the assignee setting up their respective liens and claims.

(*See answer of C. M. Walker, p.* 7; *of Thos. H. Long, p.* 10; *of Samuel J. Moore, p.* 11; *of Wm. W. Moore, Jr., p.* 34; *and of John Milner, Jr., p.* 12, *of the printed record.*)

To the answer and cross-petition of John Milner, Jr., the assignee and the other parties named filed their several replies, *except Wm. Moore, Sr.*

(*See reply of assignee, p.* 14; *of Walker, p.* 19; *of*

Long, p. 23; of Samuel J. Moore, p. 46; of Wm. W. Moore, Jr., p. 34, of the printed record.)

In these replies these parties attacked the mortgage of Milner as fraudulent, alleging that it was without consideration, and made to hinder, delay and defraud creditors. They claimed further that the original conveyance from Moore to Milner of November 17, 1870, was without consideration, and made to hinder, delay and defraud creditors, and that for these reasons the mortgage was of no validity; and for a further defense set up that Milner previous, to the election of an assignee, "presented and proved the whole of the said claim for $8,295.89 mentioned in his said answer, and voted the same at the election of an assignee."

Milner filed a rejoinder to all these different replies, joining issue, and denying all fraud, and setting up that he proved his claim as a secured claim and not otherwise.

(*See his rejoinder to reply of the assignee on page* 18 *of the printed record. Others alike in form.*)

It is unnecessary to notice the demurrers, and requests of Milner to have the hearing of the case made after these complications arose, adjourned into the District Court for further proceedings, which the record discloses, as they are no longer of any importance in the case.

Upon the case so made up and tried the Register found that the conveyance from Moore to Milner of

November 17, 1870, was fraudulent, and that the legal effect of it was, under the statutes of Ohio, to constitute Milner a trustee for the benefit of the creditors of Moore generally; that therefore the attachments of Long and Walker were invalid, because levied on property which in legal effect had been assigned in trust for all the creditors of Moore.

And that Milner, being such trustee, had no right to reconvey to Moore, as he did January 19, 1872, and that therefore the mortgage given by Moore to Milner, and here in controversy, was invalid.

He therefore held that neither Milner, Walker nor Long had any lien or preference, and placed them among the general creditors.

But held that the following liens did exist, and ordered the same paid out of the proceeds of the sale of the land:

First, the claim of Wm. Moore, Jr., for support,	$ 500.00
Second, the claim of Henry A. Shepherd, mortgage and interest,	3,532.66
Third, the claim of A. A. Moore and wife, homestead,	500.00
Fourth, the claim of Sarah J. Moore (wife of A. A. Moore), for her contingent claim in the premises for dower,	1,500.00
Fifth, the claim of Samuel J. Moore, on account of the judgments he paid as surety for Moore, as stated,	2,610.51

Sixth, the claim of William Moore, Jr., for the judgment and interest paid by him as stated, for Abram A. Moore,..... 869.49

(*See page* 170 *of the printed record.*)

This is all of the Register's finding and order that it is necessary to consider, except an order as to the application of the preference given Samuel J. Moore, to the benefit of Walker and Long, and this we mention only because it will become necessary hereinafter to refer to it.

(*Page* 157 *of the printed record.*)

The District Court, on motion to confirm the report of the Register, held that the original conveyance from Moore and wife to Milner, of November 17, 1870, was without fraud, and that under that deed Milner took and held a good and valid title, and therefore that the attachments of Long and Walker, the lands not belonging to Moore, were invalid.

But held that notwithstanding Milner was the *bona fide* owner and holder of the land, and its legal title, yet, on account of the circumstances attending the transaction, and the family relations of the parties thereto, the taking of the mortgage in controversy was in fraud of the rights of the other creditors of Moore, and should be set aside.

Upon this reasoning the District Court confirmed and approved the whole report of the Register, except the payments ordered to be made to Walker and

Long, out of the preference allowed to Samuel J. Moore, above referred to.

(*See page* 178 *of the printed record.*)

From this decree of the District Court, John Milner, Jr., Cyrus M. Walker, and Thomas H. Long, took an appeal to the Circuit Court.

When the cause came on to be heard in the Circuit Court, Judge Emmons was inclined to the opinion that the case should have been brought up, not by appeal, as a case in equity, but by a petition in review, under the 2d section of the Bankrupt Act, giving to the Circuit Courts supervisory jurisdiction of bankruptcy proceedings, and refused to hear the case unless counsel would consent to waive any irregularity which might exist on account of the case not having been brought up by appeal, instead of by petition in review, and that the transcript of the District Court might be treated as a bill of review, in case it should be held necessary.

(*See copy of entry on page* 181 *of the printed record.*)

The Circuit Court Judge prefaced the announcement of his decision of the case with the—to Mr. Milner—consolatory statement that had he tried the case *de novo*, he would most surely have sustained his mortgage, but—see copy of the decree of the Circuit Court affirming the decree of the District Court, on page 181 and 182 of the printed records.

From this decree John Milner, Jr., alone appealed—

He contends:

1. That the original conveyance from Abram A. Moore and wife to him, of date November 17, 1870, was *bona fide*, for full consideration, and without fraud, and that by reason thereof, he became the owner in fee simple of the lands covered by the mortgage in controversy.

2. That, being such owner, he had an absolute right to make a re-sale and re-conveyance of said lands to Moore, and take a mortgage on the same for the balance of purchase money, or the amount Moore would be indebted to him on settlement.

3. That, no matter whether the deed of November 17, 1870, was valid or not, the mortgage of Milner is valid.

4. That if these transactions were valid then his claim should have been preferred to all others except the mortgage of Henry A. Shepherd, which, it is admitted, was the first lien upon the tracts it covered.

I.

The deed from Moore and wife to Milner, of November 17, 1870, was without fraud and valid.

1. To set aside a deed as fraudulent, the burden of proof is on the party attacking, to show the fraud.

Briggs v. *French*, 2 Sumner, 252.

2. The fraud must be shown by the most clear and positive proof.

Phettiplace v. *Sayles*, 4 Mason, 312.

(*See pages* 319, 324).

3. Declarations and conduct of the grantor *after* the conveyance are utterly inadmissible as evidence to show the fraud.

Merrill v. *Dawson*, Hempst. 563.

Gridley v. *Bingham*, 51 Ill. 153.

Clements v. *Moore*, 6 Wallace, on page 213.

4. The declarations and conduct of the grantor *before* the conveyance may be shown, but only to prove his intention.

Magniac v. *Thompson*, 7 Peters, 343.

5. The grantor may have intended fraud, but his intention can not affect the grantee unless it be shown that the grantee participated in that fraud.

Ib.

With these propositions in mind, it becomes an easy matter to dispose of all the testimony in the case bearing upon the question of fraud, in the transaction of November 17, 1870, for the whole of it, from page 98 to 148 of the record, may be divided into four different classes:

1. Declarations and conduct of the grantor *before* the conveyance.

2. Declarations and conduct of the grantor *after* the conveyance.

3. The talk (rumors) in Moore's neighborhood about his financial affairs.

4. The circumstances of John Milner, Jr., with respect to his ability to make the purchase.

It is unnecessary to consider what the declaration

and conduct of Moore were with respect to the transaction before the conveyance, for the simple reason that there is not a word of testimony to show that Milner had knowledge of them, or that he in any way was related to them. No such thing is attempted.

It is equally unnecessary to consider what the declarations and conduct of Moore were after the conveyance, because they are incompetent for any purpose.

The testimony does show that Moore's financial condition was talked about by his neighbors, but it also shows that his neighbors were by no means agreed that he was going to be broken up. On the contrary, the testimony is that "some thought one way and some another."

(*See deposition of J. N. Henry, p.* 103 *of the printed record; also of Jonathan Wright, p.* 102, *and others to same effect*).

And the witnesses themselves, who testified, nearly all say they thought Moore amply able to pay all he owed, until they heard he had deeded away his farm.

So that the testimony, instead of showing that it was generally conceded that Moore was insolvent, only shows that there was the same idle talk about him that would be had about any man who might be unfortunate enough to be sued for a fancy sum of damages for an attempt to commit a rape, or on some other sensational account.

But suppose it was the general talk that Moore

was going to break up, in Moore's neighborhood, and in the neighborhood of Leesburg, Lexington, and Vienna; and suppose the existence of this talk and rumor were material in this case, which we deny, how does it affect John Milner, Jr.?

The testimony shows that Moore lived in Clinton county, about three and one-half miles from Lexington, and that Milner lived in Highland county, about four miles from Lexington, and eight miles from Moore.

We submit that instead of presuming that Milner had heard, and was acquainted with, these rumors, which were in existence at no place, as shown by the testimony, nearer to his residence than four miles, the presumption ought to be the other way.

Another strong reason why Milner should not have heard this talk was, the very fact that he was the father-in-law of Abram A. Moore.

Idle neighborhood gossip, such as these rumors are shown to have been, always hushes its tongue in the presence of one so much concerned as the father-in-law of the subject of such talk would be likely to be. And so far as he would be talked to at all upon the subject, it is most reasonable to suppose that it would be by those who, to him, at least, were disposed to speak as encouragingly as possible.

But, suppose John Milner, Jr., did know that Abram A. Moore was generally talked about as a man who was going to break up, on account of the Town-

send suits, hog contracts and other liabilities, at and before he took from him the deed of November 17, 1870, must it necessarily follow that he took it in *fraud* of Moore's creditors?

John Milner, Jr., in his deposition, states that he knew at the time he took that conveyance that Abram A. Moore was embarrassed. But he states that Moore told him, and he believed, that $12,000 would pay all his debts except to Long and Walker, and the damages in the Townsend suits.

That Moore promised him that he could and would compromise the Long and Walker claims, and he did not believe the Townsend suits could amount to anything.

(*See deposition of John Milner, jr., on page* 139 *of the printed record.*)

The result of the Townsend difficulty justified that belief. Those suits did not amount to anything.

Milner states that Moore had an abundance of means outside his lands to settle the Walker and Long claims.

(*On same page*, 139.)

Had he done so there would have remained with which to pay off his other debts the entire proceeds of the land, viz: $21,900, or $9,900 more money than was sufficient to pay off every dollar Moore owed.

This was the financial condition of Moore as it was known to Milner at the time of that transaction, and it shows:

1. That even if Milner did hear the rumors and talk about Moore breaking up, he knew that Moore was in a sufficiently embarrassed condition to make it a matter of no wonder that there should be anxiety upon the part of his creditors, and just such talk about him.

2. But at the same time it also shows that Milner had reason to disregard all such talk, thinking, as he did, that while it was true that Moore was in a bad condition, yet he was by no means insolvent, but able to pay all he owed and have the comfortable sum of ten thousand dollars left.

For these reasons there can not possibly, so far as we can see, be anything to the prejudice of Milner in the testimony as to the existence of rumors about Moore's financial condition, even though he should be shown to have known of them, which is not shown.

To contradict Milner in his positive testimony as to this fact, there is not even an attempt on the part of any one.

It is not even undertaken to be shown, by any one, what the amount of Moore's indebtedness, in fact, was at that time.

Mr. Milner's statements are all we have, and are, therefore, conclusive on that point.

4. A feeble attempt is made to show fraud in this transaction by the introduction of testimony in regard to Milner's financial ability to buy.

(*See deposition of Daniel Murphy as to personalty,*

on page 113, *and as to realty, on page* 129, *of the printed record.*)

We say "feeble attempt," because a man's ability to buy is not a test of his intention. Every day witnesses men overreaching themselves in just such matters. To hold such transactions fraudulent would be an absurdity. It is a common occurrence for men to undertake such things; and such ventures not unfrequently prove successful.

But we say "feeble attempt" on another account.

The testimony relates only to the amount of property, *according to its valuation for taxation*, that appears on the tax duplicate of one county, that of Highland, in which the appellant resided. It is not shown that this is all the property owned by Milner.

His counsel, therefore, quite properly objected to the testimony on this account.

(*See their exception and objection on page* 129 *of the printed record.*)

But we say "feeble attempt" for another reason.

The evidence as to Milner's worth, so far as it goes, even were it competent, shows him to have been worth in the neighborhood of ten thousand dollars at least; and this was certainly enough to enable him to accomplish the purpose he had in view in making the purchase, at least so nearly so as to make the deficiency, if deficiency there was, so small as to indicate

a mistake in judgment rather than a fraudulent intent. On this subject Mr. Milner says:

"My only motive in buying the lands was that Moore was indebted to me, and I thought I could sell the land and make the money; and had not the attachments been levied on it, I could easily have done so." (Page 140.)

"I intended when I bought the lands to sell them, and supposed I could do so on such terms as would enable me to meet my notes to Moore; and at the time I purchased the lands Moore promised me that he would settle and satisfy the claim of said C. M. Walker and Thos. H. Long. I advised him to compromise these claims and settle them. At the time he had ample means, as I supposed, to pay them, and also be able to pay all his debts."

(*See page* 138, *John Milner, Jr.'s, deposition.*)

On page 139 he says further on the same subject:

"I believed him (Moore) to be in embarrassed circumstances. He told me, and I believed, that twelve thousand dollars would pay his debts, exclusive of the Long and Walker claim and the Townsend suit. The Townsend suit I did not think could amount to much, and the Long and Walker claim I thought he would and could compromise, and I thought he had means enough outside the lands to pay them. He had a considerable amount of live stock and other personal property. I say boldly and firmly that I never had any intention whatever to defraud, or to in any manner hinder or delay the creditors of Abram A. Moore in the collection of their claims, but, on the other hand, I acted in the utmost good faith in the whole matter, *and ready and willing to do all I could to aid him in the payment of his debts.* I expected to pay every dollar of the purchase-money, and also expected

that so much of it as was necessary would be honestly and promptly applied to the payment of his debts."

With this we dismiss the fourth branch of the evidence intended to show fraud in the transaction of November 17, 1870.

To recapitulate, the whole naturally divides itself into four parts.

1. Declarations of Moore *after* the deed; wholly incompetent for any purpose.

2. Declarations of Moore *before* the deed; competent to show the intention of Moore, but nothing further, and therefore, Milner not having been in any way connected with them, incompetent to affect him.

3. Rumors that Moore would break up, and *rumors that Moore would not break up.*

Incompetent because only idle hearsay gossip, and because Milner not shown to have heard them; and not shown to have resided in the neighborhood where they were in circulation; and because the testimony shows Milner to have known that in regard to Moore's financial condition which justified him in believing him amply able to pay all he owed and have ten thousand dollars left; and therefore justified him in disregarding all such rumors which, if any, he may have heard, and dealing with Moore, as he did, without any fraud or thought of fraud.

4. Evidence tending to show Milner's financial ability to make the purchase. Incompetent to show fraud, because it does not reflect upon the question of

fraud; and because the testimony does not show his circumstances, but only what certain property belonging to him was valued at for taxation, without showing that that was all he owned, and because he only made the purchase with a view of selling again to the end that he might aid his son-in-law to relieve himself of his embarrassments, and the evidence shows him to have been amply able for that.

Had this been all the testimony in the case, the District and Circuit Courts, Judges Swing and Emmons, must have found, as they both did, that there was no fraud in the conveyance of November 17, 1870, and that John Milner, Jr., took a good and valid title under that deed.

But in addition to the failure of the opposite side to show fraud, (on whom that burden rested), there is the positive testimony of Milner, and those who testified in his behalf, to show that there was no fraud.

It shows that the terms of purchase were agreed upon a week or ten days before the conveyance.

(*See deposition of John Milner, Jr., on pages* 134 *and* 135, *printed record.*)

"I wrote—I commenced writing—the deed on the day Moore applied to me to write it, and finished it the next. This is my recollection. It was signed and acknowledged *two or three days afterward.*"

(*Deposition of C. C. Bowers, on page* 99 *of the printed record.*)

Parties intending fraud do not proceed so leisurely or so naturally.

Again, the consideration expressed in the deed was not only adequate, but it was *bona fide*, and it was paid and agreed to be paid as follows, viz: Milner canceled an indebtedness to him of Moore of $4,000, not one single dollar of which did he think himself in danger of losing; assumed a $3,000 mortgage to Henry A. Shepherd, and gave his notes, one for $10,000, due December 25, 1870, and another for $4,900, due December 25, 1871, making in all $21,900, which was a full and adequate consideration forthe lands.

(*See page* 135 *of printed record, deposition of John Milner, Jr.*)

That $21,900 was the full value of the lands, see deposition of W. T. Swain, on page 148 of printed record.

But should it be found that the conveyance of November 17, 1870, was intended to hinder, delay, and defraud Moore's creditors, still the effect would not be, as was held by the Register, to make Milner a trustee for the benefit of the creditors of Moore generally.

The statute law of Ohio upon this subject, in force since 1863, and still, reads as follows—so much of it as is necessary to be quoted:

"All transfers, conveyances, or assignments made with intent to hinder, delay or defraud creditors, *shall be declared void at the suit of any creditor;* and the probate judge of the proper county after any such

transfer, conveyance, or assignment shall have been declared, by a court of competent jurisdiction, to have been made, with the intent aforesaid, shall, upon the application of any creditor, appoint an assignee, who shall recover the property and administer the same." *Swan & Sayler's Supplement, page* 397.

The effect of the law as it has stood since 1863 is to make such conveyances absolutely void, provided any creditor shall bring suit therefor.

If no creditor should bring suit for that purpose, the conveyance would stand, and be just as valid as any other, no matter what may have been the intent of the conveyance.

But the decree of the court of competent jurisdiction, declaring such conveyance to be void, does nothing more than to make it void. That does not create a trust estate in the grantee. It simply divests the grantee of all title and estate whatever, and paves the way for the taking of *another* step, *in another court*, whereby not the grantee, but an assignee, may be appointed by the Probate Court, upon the application of any creditor, to hold the property in trust for the benefit of creditors.

Had the law that was in force prior to 1863 been in force when the transactions in controversy were had, there might have been some *slight* excuse for the holding of the Register. For by that law it was declared that all conveyances, transfers, etc., made with intent to hinder, delay, and defraud creditors should inure to

the equal benefit of all creditors. 1 *Swan & Critchfield, page* 713.

But inasmuch as the law of 1863 had been substituted, and no step had been taken under it to have the conveyance declared void, and an assignee appointed, the Register erred in holding that the conveyance was in trust, and we apprehend that there can be no danger but what this court will agree with us upon this point, as did both the District and Circuit Courts.

Finally, as to the conveyance of November 17, 1870.

The deed was for a valuable and an adequate consideration paid, and the change of property was *bona fide*, and the whole transaction just what it professed to be.

Such being the facts, it was valid.

"We know of no law which avoids a deed where a valuable (by which, to a general intent, must also be understood *adequate*) consideration is paid, and the change of property be *bona fide*, or such as it professes to be. Of such a contract it can not be predicated that it was with intent to defeat or defraud creditors, since, although the property itself no longer remained subject to the judgment, a substitute is furnished by which that judgment may be satisfied."

Wheaton v. *Sexton*, 4 Wheaton, 503–508:

Want of possession of real estate is not, as it is of personal estate, a presumption of fraud. *Phettiplace* v. *Sayles*, 4 Mason, 312.

II.

The conveyance of November 17, 1870, being valid, Milner thereby became the owner of the lands. He remained the owner until the 19th day of January, 1872, when he re-conveyed to Moore, and took the mortgage in controversy. Treating this re-conveyance as a sale, the note for $8,295.29 was the balance of purchase money. Treating the transaction as merely an effort of the parties to assume their original positions with respect to the lands, and effect a settlement of their affairs, the $8,295.29 was the amount of the balance due Milner from Moore on such settlement.

In either case we maintain that Milner had a right to secure himself as he did, both as to this principal sum and his liability as surety.

And we must be permitted to say that it has always been a matter of extreme wonderment and surprise to us, that the District Court, after holding that the conveyance of November 17, 1870, was valid, and that Milner held a good and valid title to the lands under that deed, should also have held that the mortgage taken by Milner to secure the balance of purchase money, or balance on settlement, as it may be seen fit to call it, was fraudulent.

What is there in the transaction to make it so?

It is true that the transaction was had in the nighttime, and in a hurried manner, and that almost every-

thing else was foolishly done that was calculated to throw suspicion on the transaction.

But this is the first instance in which we have ever thought it necessary to solemnly remind a respectable court of so simple a fact as that a man, even a father-in-law, has a right to sell and convey, or convey without selling, lands which he may honestly own, as the District Court held that Milner owned his, at any time, or place, or to any body, even a son-in-law, or for any price he may see fit to accept, or object he may desire to accomplish, provided he do not thereby interfere with the rights of his own creditors.

We speak particularly of the District Court, because Judge Emmons excused himself from the inconsistencies to which we have called, and shall call attention, on the ground that while he would not have so decided the case, had he tried it in the first place, yet he did not feel clear to set aside the decree of the District Court.

But coming back again to this reconveyance, the time, place, manner, and character of the transaction can not be considered badges of fraud as to Milner, bad as they may appear, for the reason (1) that the whole thing was in pursuance of the advice of his attorney, and under his immediate direction, and not for the purpose of defrauding Moore's creditors, but for the purpose of *securing to Milner*, without the trouble and expense of litigation, that to which he was justly entitled, and avoiding, had matters remained

as they were, the necessity of fighting the successive attachments of all Moore's creditors, in order to maintain his rights; and (2) Milner was dealing with his own property, and the place and manner of dealing with it did not concern anybody else, unless he so dealt with it as to interfere with their rights. Milner, aside from the advice of his counsel, gives an exceedingly good reason why he reconveyed. He says:

"I sold the land back to Moore, and conveyed it to him by a quitclaim deed, dated January 19, 1872; and the reason for re-deeding the land to Moore was, that I was not able, pecuniarily, to hold the land, and by reason of the attachments of C. M. Walker and Thos. H. Long having been levied upon the land, I could not sell it."

(*See deposition of Milner, page* 136.)

On page 138, Milner says:

"I want further to state, as a reason for conveying the land back to Moore, and taking a mortgage from Moore to me, was the advice of my attorney, whom I consulted about my proper course after the levy of the attachment on the land. I intended when I bought the lands to sell them, and supposed I could do so on such terms as would enable me to meet my notes to Moore, and, at the time I purchased the lands, Moore promised me that he would settle and satisfy the claim of said C. M. Walker and Thos. H. Long. I advised him to compromise these claims and settle them. At that time he had ample means, as I supposed, to pay them, and also be able to pay all his debts. He, however, did not settle the Long and Walker claims, and when they sued out their attachments, it so complicated matters that I could not sell

the land, and without selling it I could not meet the payments of the purchase-money. And, upon being advised by my lawyer, that I had better sell the land back to Moore, and take his mortgage for the amount he should be indebted to me, if I could get Moore to do it, I saw Moore, and at first he refused to do it. He wanted to get Sam Moore, Wm. Moore, and Tom Moore, and his father to take part of the land in payment of their debt, as I had before told him, if they would take part of the land I would release it to them, and take a credit on my note for the amount. Afterward, he came to me one evening about dark, and said they would not take any of the lands, and he supposed they were about to institute proceedings to attach my notes, or the lands, or both, and that he would take the lands back. We both then went to see Mr. Beeson, then my attorney, and he directed us to go to Eli P. Johnson, a notary public, and let him draw up the papers: by this time it was considerably after night. We went to Johnson's, and he drew up the deed from me to Moore, and the deed from Moore to me, for the western land which he had purchased with one of my notes, and the mortgage from Moore and wife to me. Mr. Beeson was present when Johnson commenced writing the mortgage. Moore had gone after his wife, and as I did not know just what arrangement he would make about my $10,000 note, which he had traded off, the consideration was left blank.

"When Moore came back, that matter was arranged by my agreeing to take the western land at $6,000, and the balance of the $10,000, to be included in the mortgage; but the blank for the consideration was forgotten to be filled. By the time all the writings and notes were filled up and signed, it was well on toward morning.

"At this time I agreed with Moore that if he could make more than $6,000 out of the Western lands within six months, I would let him have it back at $6,000, and I am still willing to let the assignee

have it at that amount. My $4,900 note to Moore for the land was not paid when it became due, because by reason of said attachment my said attorney advised me not to pay it, but to deed the lands back to Moore, if I could get him to take them, and for me to take his mortgage for the difference he would owe me."

(*Deposition of John Milner, Jr., pp.* 138, 139, *of the printed record.*)

See also, in full corroboration of the above, so far as it goes, the deposition of Eli P. Johnson, p. 111.

We have made this rather full quotation in order that we might thereby make a full statement of the whole transaction of the 19th of January, 1872, from the sworn evidence itself. We think it fully sustains all we have claimed for Milner as to his innocence of fraud in the transaction. It shows that the original idea of Milner to sell the lands and thus meet his notes, having become impossible to be carried out, by reason of the attachments, and *being so advised by his counsel*, Milner procured Moore to agree to simply take the lands back at the same price at which he had purchased them; the dominant idea in their minds being, not so much a resale as a mere quitclaim reconveyance, the consideration expressed for which was immaterial so that it was valuable—the object being to undo as far as possible, for the sake of relieving Milner from impending litigation and financial embarrassment, all that had been done, and to secure to

Milner what was justly owing to him. For it is evident that the settlement made was based upon a consideration for the reconveyance of $21,900, instead of the expressed consideration of $16,000.

This discrepancy between the expressed and the actual consideration of the reconveyance did not mislead any one, and did not wrong any creditor of Moore to the extent of a dollar. They might as well have inserted $1, or any other amount, since the only object of expressing a consideration was manifestly to give validity to the deed and support the conveyance. Nothing is clearer than that $21,900 was the actual consideration, so intended, and that the inserting of $16,000 worked no prejudice to any one, and nothing is clearer either than that by the mortgage Milner took no more than was justly due him, and that Moore's creditors got the whole benefit of every cent.

The cause of the great haste in which the matter was attended to was the impression Moore had that other attachment suits were about to be commenced. If the attorney advised the transaction, and advised the haste, and personally superintended the whole matter, Milner certainly should not be blamed or made to suffer for anything that only *appears* unseemly, if unseemly it was, but was not wrong.

He was but a plain farmer, to whom questioning the advice and counsel of his attorney would have seemed presumption itself.

But, dropping sight of the appearances, what was the transaction itself?

Milner reconveyed to Moore (the land being not Moore's but Milner's) at the same price at which he had bought from Moore, viz., $21,900, neither party making or losing a dollar, and Moore paid him as follows:

He reassumed the Shepherd mortgage.....	$3,000.00
By Western land.....	6,000.00
By surrendering note for $4,900, on which there was due after deducting payments by Milner for Moore of $85 to Acre, $90.29 to Wilmington National Bank, and $120.62 to Savage, in all $295.91...	4,604.11
By mortgage for balance.....	8,295.89
Total.....	$21,900.00

Or treating the matter, as the parties evidently regarded it, not as a resale so much as a reconveyance and settlement, we find that Moore was owing Milner as follows:

On old account of 1870.....	$4,000.00
Difference between Western land and note for $10.000.....	4,000.00
Money paid Acre and others, as above.....	295.91
Total.....	$8,295.91

Was not the whole amount of $8,295.29 due to

Milner from Moore? And had not Moore received the full benefit of every cent of it?

By the entire transaction, from beginning to end, Moore did not lose a dollar.

How, then, can it be claimed that the mortgage was in fraud of the rights of Moore's creditors, and invalid?

The fact that the mortgage indemnified Milner against loss as surety for Moore does not affect the matter. That was entirely legal. *Kramer* v. *Bank*, 15 Ohio, 253.

But it is said that the Illinois land cost Moore $10,000, and that Milner took it at only $6,000. Very well; Milner had a right to refuse to allow any more for his land than he thought it worth. That he allowed him all he honestly thought it worth is shown by his offer to let any one have it for the same price. If Moore paid more for the land than it was worth, that was Moore's loss, and the loss of his estate and creditors, and none of Milner's lookout.

Neither is there anything to the prejudice of Milner in any of the transactions between his brothers, or between his brothers and Moore, in regard to the notes, Western land, etc., for (1) the reason that he had no knowledge of or connection with them in any way, so far as the testimony discloses, and (2) because in those transactions we fail to see anything, considering the circumstances and the character of the parties thereto, that is indicative of fraud. We rather think

the manner of these dealings, as detailed in the evidence, shows merely a simple confidence in one another. They were brothers (not strangers) trading among themselves, and consummating matters when convenient. And such was the view taken of this matter by Judge Emmons.

III.

No matter whether the deed of November 17, 1870, *was valid or not, the mortgage of Milner is valid.*

Should the Court find that the deed of November 17, 1870, was made with intent to hinder, delay, and defraud the creditors of Moore, the effect would not be, as we have already shown (*ante*, p. ——), to make the deed one in trust for the benefit of the creditors of Moore generally, as was held by the register.

But if this suit, commenced by the assignee and brought into this Court as shown, be such a suit as is contemplated by the statute quoted, which we deny, and in "a court of competent jurisdiction" within the meaning of that statute, then the effect of such finding can go no further than to declare that deed void; and that deed being void, it created no trust in Milner, but the title simply remained in Moore; and on the 19th and 20th days of January, A. D. 1872, Moore was still the owner of the lands, irrespective of the deed of reconveyance at that time made by Milner to Moore.

In such an event, the proper way to test the validity of Milner's mortgage would be to simply leave

out of consideration entirely both the deed from Moore to Milner and from Milner back to Moore, and treat the case as one of simple preference by mortgage.

So regarding the case, how does it stand?

Nobody intelligently contends that any of these transactions were in fraud of the bankrupt act. They were all far outside the limitations. Being a question, then, independent of the bankrupt act, the simple giving of a mortgage was no fraud.

Outside and independent of the bankrupt act, a debtor has a perfect right to prefer a creditor:

> "That a debtor has a right to prefer one creditor to another can not be denied, and that his private motives for giving this preference, provided the preferred creditor has done nothing improper, can not annul this right is equally certain."
>
> *Marbury* v. *Brooks*, 7 Wheaton, 577.

This case presents some very sensible law concerning transactions between son-in-law and father-in-law, which we commend to the consideration of the Court.

The only question to consider, then, is whether or not John Milner, Jr., was a *bona fide* creditor of Abram A. Moore at the time when the mortgage was given, in the amount expressed in the mortgage.

Moore still owed him the $4,000 that he was owing him on the 17th day of November, 1870, which indebtedness is fully itemized and accounted for on

page 135 of printed record, in the deposition of John Milner, Jr.

Milner had given Moore his note for $10,000 on the 17th day of November, 1870, and this note had not only been traded off by Moore, but had been paid off by Milner with $1,700 in money, and a new note for the balance directly to Moses Milner, to whom Moore had transferred it.

(*See page* 136 *of record, deposition of John Milner, Jr.; also, deposition of Moses Milner, page* 140.)

The western land was taken by Milner from Moore at $6,000; this left a balance due from Moore to Milner, on account of the ten thousand dollar note, of $4,000.

In addition, while Milner was holding the land, he paid for Moore, which Moore was still owing him:

To Samuel Acre	$85.00
" National Bank of Wilmington	90.29
" O. B. Savage	120.62
Total	$295.91

To sum up then, on the 20th day of January, 1872, Abram A. Moore was indebted to John Milner, Jr., as follows:

On old account	$4,000.00
On account of difference between the value of the western land and $10,000 note.	$4,000.00
On account of money paid to Acre and others	295.91
Total	$8,295.91

And Milner was liable for him as his security on the notes to Worthington and John B. Moore in the sum of $1,470. And Moore was the owner of the lands.

This being the state of facts that existed, Moore gave to Milner a mortgage on his lands to secure him.

Had bankruptcy followed within the proper time, there might have been a question as to the validity of the preference, assuming that Milner had no title under the deed of November 17, 1870; but inasmuch as bankruptcy did not take place until more than *ten months* afterward, the only question is whether or not a mortgage given by a debtor to his creditor to secure a *bona fide* indebtedness is valid, independent of bankruptcy.

There can be but one answer to the question, and that, except that it goes further than is necessary, is very well given in the following, viz:

> "The acceptance of a mortgage from the debtor, who gives such mortgage with the intent, known to the mortgagee, to delay or defraud another creditor, is not void or fraudulent, if the creditor accepts the mortgage for the purpose of securing a *bona fide* debt due such creditor from the mortgagor."
>
> *Chase* v. *Watters*, 28 Iowa, 460.

We claim, therefore, (1) that if the conveyance of November 17, 1870, was valid, as we maintain it was, and as both the District and Circuit Court held it to be, then Milner had a perfect title until the reconvey-

ance January 19, 1872, and being such owner, the mortgage was properly taken and is perfectly valid, and must be sustained; and we claim (2) that if the conveyance of November 17, 1870, was made to hinder, delay, and defraud creditors, the only effect such a finding can have is to make the deed absolutely void, the effect of which would be to leave the title in Moore and convert the case into one of simple preference by mortgage of a *bona fide* debt; and (3) that in neither case was the giving of the mortgage a fraud upon the other creditors of Moore. The very worst that can be said of it is, that it was a preference, but being outside the limitation of the bankrupt act, it was a perfectly valid preference.

IV.

If we are correct in the preceding propositions, then Milner's mortgage should have been preferred to all other claims against the lands except the mortgage of Henry A. Shepherd, which it is admitted was the first lien upon the land it covered.

Let us consider them in their order; and,

First, the claim of Wm. Moore, Sr., for support, $500.

As to this claim we have only to say that, except in the petition of the assignee, where it is stated that Wm. Moore, Sr., claims to have an agreement with Abram A. Moore for half his support, and claims that it is a lien on the third tract of land described in the

petition, which he estimated to be of the value of $500, there is not, anywhere, from one end of the record to the other, any mention whatever of the claim, except in the register's report allowing it as a preferred claim. The record shows that Wm. Moore, Sr., was served with process, and required to answer and set up his claim as all the others were. But he did not answer. He did not set up any claim. He did not come forward and testify, nor did any one else for him. As we have said, in no manner, shape, or form, does this claim appear, from the petition to the finding.

The assignee does not state in his petition that such a claim and lien *did exist* so as to make it necessary to deny it to put Moore on proof, but simply said Moore so *claimed*. But even if it were set up by the assignee positively, as a claim, so as to make a denial necessary, that denial is found in the answer of Milner on pages 14 to 16, where he denies that there is any claim or lien prior to his.

Such being the facts with respect to this claim, we maintain that the Register and both the District and Circuit Courts have clearly erred in allowing the claim at all, much more so in allowing it as a preferred claim, and this, too, wholly irrespective of the question as to the validity of Milner's mortgage. In any event, then, the allowance and preference of this claim is one of the errors upon which we ask a reversal of the decree of the Circuit Court.

Third, the claim of A. A. Moore and wife for a homestead, $500.

This depends upon our mortgage. If the mortgage is sustained, it prevails because both husband and wife have joined in it.

The fourth preferred claim allowed by the Register is for the contingent claim for dower of Sarah A. Moore, the wife of Abram A. Moore.

If our mortgage is good, it prevails over this claim also, because the wife joined in the mortgage and relinquished that claim.

Even under the holding of the Register the giving of this preference was error, because even if the deed of November 17, 1870, was only in trust, still it was a deed in which the wife of Abram A. Moore had joined, and relinquished her contingent claim of dower.

The fifth claim allowed by the Register as a preference is that of Samuel J. Moore, on account of the judgments paid by him for Milner, amounting to $2,610.51.

If the conveyance of November 17, 1870, was in trust for the benefit of creditors, and on that account Milner had no right to reconvey in January, 1872, as the Register held, then the trust continued and was in existence when these judgments were rendered and paid, and for that reason it was error for the Register, upon his own theory of the case, to give this preference.

We claim it to be error, however, to give it prefer-

ence over us, on the simple ground that we hold a prior valid mortgage.

The sixth preferred claim allowed by the Register is the claim of Wm. Moore, Jr., for $869.49 on account of the judgment paid by him as security for Abram A. Moore.

This judgment was rendered at the *November Term* 1871, on the 1st day of December, 1871.

(*See answer of Wm. W. Moore, Jr., page* 37.)

This was while the land was in the hands of Milner, *in trust*, as the Register claimed, *and by valid fee simple title*, as the District and Circuit Courts both held. In neither case could the judgment be a lien on the lands. If *in trust*, the judgment was not only not a lien, but it could not have been levied upon the lands, because the legal title was not in Moore, against whom the judgment was rendered.

Manley v. *Hunt*, 1 Ohio, 257.

If Milner held in fee simple by valid title, then so long as he so held, there could be no lien on the land. Nor could there after Milner reconveyed, January 19, 1872, because while a judgment is a lien upon all the land of the judgment debtor, in the county where judgment is rendered, yet it is not a lien upon after-acquired property.

Rhodes v. *Symmes*, 1 Ohio, 281.

Therefore, whether Milner's mortgage is sustained or not, the Register and both courts below erred in allowing this preference.

V.

There was no proof offered on the subject of the manner in which Milner proved his claim. His denial that he proved it other than as a secured claim, must therefore stand.

The point was never insisted upon.

VI.

This case was a case in equity within the meaning of the 8th section of the bankrupt act, and it was therefore properly taken up from the District Court to the Circuit Court by appeal.

Stickney, Assignee, v. *Wilt*, 23 Wallace, 151.

VII.

In conclusion, we feel constrained to ask the Court to give attention also to the matter of the allowance of costs as made by the Register, and confirmed by the courts below.

It is a too well grounded objection to the bankrupt law that the costs of its administration are too extravagant. Estates are too frequently eaten up—always sufficiently exhausted—by necessary and proper costs. Therefore, at least a reasonable regard should be exercised by the registers and others in the making of costs in matters of this kind.

And when it is manifest that no such reasonable care has been taken, and it appears that extravagant

and unnecessary costs have been made, we think it due the unfortunate creditors to disallow them.

If our view of the powers and duties of the register in this case be correct, it is difficult to think of a more ridiculous and inexcusable piece of unnecessary and extravagant proceeding than that, which is disclosed by the record, of the Register, upon his own motion, directing counsel to make up issues of fact, to be "sent down" from himself as Chancellor, to be tried by a jury, impaneled by himself for that purpose; and then, after thus clogging and delaying the proceedings for ten days or two weeks, at an increased cost on account of the jury of near $50 per day, impatiently dismissing the jury and deciding the case himself.

The expense of this jury is ordered to be paid by the register, and the District and Circuit Courts have not only confirmed the order, but have ordered further that the Register, who has inflicted the injury, shall be paid $535, chiefly for his services in that behalf.

We claim that the costs of the jury should not be allowed; and that inasmuch as the per diems of the marshal, clerk, etc., and all other expenses were so greatly increased by reason of the jury, the Register should not be allowed more, to say the best for him, than a reasonable compensation for the services that would have been necessary to accomplish what was done had not the jury been called.

We mention this matter of cost because the proceeds of the sale of the real estate covered by our mortgage will be insufficient to pay the necessary costs, the Shepherd mortgage, and our claim in full.

The record shows that everything of which we complain was excepted to at the time.

Walker and Long having seen fit to abide the decree of the Circuit Court, we deem it unnecessary to consider their claims.

Respectfully submitted.

J. B. FORAKER,
Of Counsel for Appellant.

July 30, 1877.

Supreme Court of the United States.

John Milner, Jr., Appellant,

vs.

William M. Meek, Assignee in Bankruptcy of Abram A. Moore, Appellee.

BRIEF FOR APPELLEE.

H. L. DICKEY,

Counsel for Appellee.

Supreme Court of the United States.

John Milner, Jr., Appellant,

vs.

William M. Meek, Assignee in Bankruptcy of Abram A. Moore, Appellee.

BRIEF FOR APPELLEE.

The motion to dismiss the appeal in this case is founded upon the following adjudicated cases of this Court, in which counsel for the appellee maintain that the principle is well settled that no appeal can be taken from the decision of any Circuit Court affirming or reversing the judgment and decree of any District Court in any matter when the proceedings are "Proceedings in Bankruptcy," viz:

11*th Wallace, page* 65—*Morgan vs. Thomlinson.*

12*th Wallace, page* 452—*Hall vs. Allen.*

14*th Wallace, page* 430—*Mead vs. Thompson.*

15*th Wallace, page* 638—*Marshal vs. Knox.*

16*th Wallace, page* 553.

19*th Wallace, page* 274—*Cort vs. Robinson.*

3*d Otto, U. S. Supt. Court Reports, page* 347—*Wiswall et al. vs. Campbell et al., assignees.*

The syllabus in this case says: "This Court has no jurisdiction to review a judgment of the Circuit Court rendered in a proceeding upon an appeal from an order of the District Court rejecting the claim of a supposed creditor against the estate of a bankrupt."

In the "American Law Times and Reports," Vol. 10, No. 5, May, 1877, page 69, the following decision of this Court, made at the Term of 1876 and 1877, (not yet published in the Reports,) is published, and doubtless is correct:

"No. 840. Albert Conro et al.
vs.
"Charles S. Crain et al.
"Appeal from the Circuit Court of the United States for the Northern District of Illinois.

"Chief-Justice Waite delivered the opinion of the "Court dismissing the appeal for want of jurisdiction. "It is here considered settled that appeals do not lie "to this Court from the decisions of the Circuit Courts "made in the exercise of their supervisory jurisdiction "under the Bankrupt Law."

Now, according to these decisions and the principles of the two last ones quoted, the only questions in this case are—

1st. Were the proceedings originally instituted in the District Court of the United States for the Southern District of Ohio by the appellee in this case as assignee in bankruptcy "proceedings in bankruptcy" under the Bankrupt Laws of the United States, and had that Court original jurisdiction of the case?

2d. If the proceedings were "proceedings in bankruptcy," and the said District Court had original jurisdiction of all the subject matters of the petition, and from its decision an appeal was taken to the Circuit Court of the United States for the Southern District of Ohio, and on hearing of such appeal said Circuit Court affirmed the decree and judgment of said District Court, then is not such judgment of said Circuit Court "conclusive" between all parties?

The provisions of the Bankrupt Laws in relation to the jurisdiction of the District and Circuit Court are so plain and obvious, and are so often referred to in the foregoing decisions, and are so familiar that counsel for the appellee will not again quote or comment on them, and will be satisfied with saying that, if the original petition of the appellee was "a proceeding in bankruptcy," that then it follows from the positive provisions of the Bankrupt Acts that this Court has no jurisdiction of this case by appeal.

The petition of the appellee to the Judge of the District Court for the Southern District of Ohio was for the purpose "of discharging incumbrances and ascertaining the amount and priority of liens," [see printed record, pages 1 to 5,] and of such questions said District Court had full and ample jurisdiction [see Ninth Edition Bump's Law and Practice in Bankruptcy, pages 345 and 346, and the authorities there referred to.]

To this petition all the creditors answered, who claimed priorities, and among them the appellant,

John Milner, Jr., who claimed priority under a certain mortgage referred to in the pleadings, and by the replication of the assignee to Milner's answer and the cross petitions of several creditors the claim of John Milner, Jr.—its priority—was disputed on the ground of fraud.

Under the Order of Reference which was made to the Register, [see printed record, pages 6 and 7,] in which, among other things, he was directed to "proceed to hear the testimony adduced by the parties and arguments of counsel and to determine the priority of liens among the creditors of said bankrupt, and he shall make a full report to this Court of all his findings, together with the evidence produced by the parties on the said hearing, and of all other such matters as may transpire in the premises, as may seem to him proper for the investigation of the Court."

In pursuance of said Order of Reference, after an investigation which lasted near two months, the Register, on the 30th day of September, A. D. 1873, reported, among other things, as follows: "And the Court being fully advised in the premises, does find and adjudge that the mortgage deed executed by A. A. Moore to said John Milner, Jr.—dated 19th of January, 1872—under which, in his petition, the said John Milner Jr., claims priority of lien for his claim on the premises in the assignee's petition described, was fraudulent and void as against all the other creditors of the said Abram A. Moore, and that no priority of lien was created by such mortgage." [See printed opinion of the Register here-

with furnished.] "It is thereupon ordered by me that the claims of said John Milner, Jr., be postponed, and be placed among the class of claims of general creditors." This report and all the findings of the Register was affirmed by the District Court, [see printed record, pages 177 and 178,] except as to the claim of Thomas H. Long, and from such finding and decree of affirmation an appeal was taken to the Circuit Court by John Milner, Jr., the appellant, Cyrus M. Walker, and Thomas H. Long, and on hearing the said Circuit Court adjudged as follows: "On consideration whereof, it is now here ordered, adjudged and decreed that the decree of the said District Court in this cause be, and the same is in all respects hereby affirmed." [See printed record, page 182.] Under the Bankrupt Laws it is enacted [see Sec. 4972,] "the jurisdiction conferred upon the District Courts, as courts of bankruptcy, shall extend—First, to all cases and controversies arising between the bankrupt and any creditors who shall claim any debt or demand under the bankrupt. Third, to the ascertainment and liquidation of the liens and other specific claims thereon. Fourth, to the adjustment of the various priorities and conflicting interests of all parties."

Now the petition of the assignee in bankruptcy, and the whole proceedings, were manifestly for the exclusive purpose of settling "cases and controversies" arising between the bankrupt and his creditors, to the "ascertainment and liquidation of the liens and other specific claims thereon," "and to the adjustment of the various priorities and conflicting interests of all

parties." [Also see Sec. 4,980.] "Appeals may be taken from the District to the Circuit Court in all cases in equity, &c., when the debt or damages claimed amount to more than five hundred dollars." By Section 4,985: "The final judgment of the Circuit Court rendered upon any appeal provided for in the preceding section shall be conclusive."

Can the provisions or language of a statute be more plain and explicit than the foregoing? And, as well said by one of the Judges of this Court, "Proceedings in bankruptcy are summary proceedings." Now if an appeal is to be taken from the Register to the District Court, and from the District Court to the Circuit Court, and from the Circuit Court to the Supreme Court, then instead of the proceedings being summary they become more dilatory than any other litigation. And therefore it is insisted that this appeal shall be dismissed.

The second ground for the dismissal of the appeal presents this question: Whether the appellant, John Milner, Jr., is entitled to be heard in this Court without bringing before the Court the class of preferred creditors who are ordered to be paid before any dividend could be made for him as a general creditor. These preferred creditors, to-wit, William Moore, A. A. Moore and wife, Sarah J. Moore, Samuel J. Moore, William Moore, Jr., C. M. Walker and T. H. Long, were all parties in all the proceedings, and are directly interested in the judgment to be pronounced by this Court, and certainly should be heard. The decrees in the District and Circuit Court are joint

in this, to-wit, that by appropriating the fund to the preferred creditors the amount of such preferred claims was taken from the claim of John Milner, Jr., or by appropriating the same to said Milner it was taken from the preferred creditors; and such legal result brings them into Court as opposing litigants, and they all should be heard. For it will not do to say that they shall be heard through the assignee, because the assignee is in no wise interested in the result. In as much as he can pay out the fund as well to one class of creditors as another, and as it is his duty to be impartial among all the creditors, he cannot be supposed to be interested to any such extent as would justify him in carrying on this expensive litigation at the risk of costs to be paid by himself; and therefore it is insisted that the appeal in this case shall be dismissed on the ground that the bond executed in the case cannot and does not prevent the preferred creditors from claiming their priorities as adjudged to them by the said District and Circuit Courts.

See 12*th Howard, page* 21—*Smith vs. Clark.*

See 20*th Howard, page* 280—*Mussina vs. Cavazos.*

HENRY L. DICKEY

For William M. Meek, Assignee in Bankruptcy of Abram A. Moore.